



In the Matter of:

JOSHUA J. ISRAEL,

ARB CASE NO. 09-069

COMPLAINANT,

ALJ CASE NO. 2008-STA-001

v.

DATE: May 26, 2011

BRANRICH, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Joshua J. Israel, *pro se*, Shakopee, Minnesota

Before: E. Cooper Brown, *Deputy 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 Surface Transportation Assistance Act (STAA or Act) of 1982.¹ Joshua Israel began working at BranRich, Inc., on March 14, 2007. Recommended Decision and Order (R. D. & O.) at 3. Shortly thereafter, Israel claimed that he engaged in protected activity by informing a BranRich safety officer of violations of federal regulations.

¹ 49 U.S.C.A. § 31105 (Thomson/West 2007). Congress amended the STAA in 2007 after Israel filed his complaint with OSHA. Implementing Recommendations of the 9/11 Commission Act of 2007, P.L. 110-53, 121 Stat. 266 (Aug. 3, 2007).

Apr. 30 Compl. to OSHA at 1-2; R. D. & O. at 3-8. As a result of his protected activity, Israel claimed BranRich retaliated against him and eventually terminated his contract on or about April 25, 2007, in violation of the STAA. Apr. 30 Compl. to OSHA at 1-2; R. D. & O. at 16-17.

On April 30, 2007, Israel filed a complaint against BranRich with the Occupational Safety and Health Administration (OSHA). OSHA concluded that Israel's complaint had no merit and dismissed the claim. OSHA Order at 2 (Sept. 19, 2007). Israel objected to OSHA's order and requested a hearing. After holding the hearing, the Administrative Law Judge (ALJ) assigned to the case dismissed Israel's claim on February 27, 2009.

Israel appealed the ALJ's R. D. & O. to the Administrative Review Board (ARB or Board).² While the case was pending before the Board, the former counsel for BranRich informed Israel and the Board that BranRich had ceased operations and formally dissolved due to the downturn in the economy. *See* Mar. 27, 2009 and June 22, 2009 correspondence to ARB.

In response to notification of the dissolution, on February 28, 2011, the Board issued an Order to Show Cause why the Board should not dismiss Israel's appeal due to BranRich's dissolution. Israel replied on March 15, 2011; BranRich did not file a response.

Reviewing the material, we find the parties have failed to show cause why Israel's appeal should not be dismissed. In his reply, Israel argues the case should not be dismissed and that the ARB should award default sanctions against BranRich because it failed to file a brief responding to Israel's petition for review. For authority, Israel cites to a rule authorizing an ALJ to award default sanctions against a Respondent for failing to file a response to a complainant's complaint. 29 C.F.R. § 18.5(b) (2009). But this regulation is applicable to hearing procedures before the ALJ, not appellate proceedings before the Board. Unlike a case at trial, a case on appeal does not require both parties to fully vet the appeal. Israel lost his case before the ALJ, and thus Israel, as the appealing party, has the burden to prove his arguments on appeal. BranRich carries no such burden and is not required to respond to Israel's appeal.

Israel's response also fails to address BranRich's status as a dissolved company. Israel provides no argument or legal discussion concerning maintaining a case against a dissolved entity. We are aware that pro se pleadings are held to less exacting standards than those prepared by counsel and are to be liberally construed.³ Nevertheless, despite the fact that pro se filings are construed liberally, the Board must be able to discern cogent arguments in any appellate brief, even one from a pro se litigant.⁴ For us to consider an argument, a party must develop the

² The Secretary of Labor has delegated to the Board her authority to issue final agency decisions under the SOX. 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).

³ *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Young v. Schlumberger Oil Field Servs.*, ARB No. 00-075, ALJ No. 2000-STA-028, slip op. at 3 (ARB Feb. 28, 2003).

⁴ *United States ex rel. Verdone v. Circuit Court for Taylor Cnty.*, 73 F.3d 669, 673 (7th Cir. 1995) (per curiam) ("Even pro se litigants, particularly one so familiar with the legal system, must

argument with citation to authority.⁵ Thus, because Israel has failed to discredit BranRich's disclosure of dissolution and failed to provide any legal authority allowing him to continue this action against BranRich despite its dissolution, the Board dismisses the instant appeal.

CONCLUSION

Because we find the parties failed to show cause why the appeal should not be dismissed, we **DISMISS** Israel's appeal.

SO ORDERED.

LUIS A. CORCHADO
Administrative Appeals Judge

E. COOPER BROWN
Deputy Chief Administrative Appeals Judge

JOANNE ROYCE
Administrative Appeals Judge

expect to file a legal argument and some supporting authority.”); *Pelfresne v. Village of Williams Bay*, 917 F.2d 1017, 1023 (7th Cir.1990) (citations omitted) (“A litigant who fails to press a point by supporting it with pertinent authority, or by showing why it is sound despite a lack of supporting authority . . . forfeits the point. We will not do his research for him.”).

⁵ See *Cruz v. Am. Airlines, Inc.*, 356 F.3d 320, 333-334 (D.C. Cir. 2004) (citations omitted) (“Although we may discern a hint of such an argument after a close reading of plaintiff’s reply brief (albeit not a hint supported by both citations to authority and argument, as is required by Federal Rule[s] of Appellate Procedure 28(a)(9)), plaintiff was required to present, argue, and support this claim in his opening brief for us to consider it. We are not ‘self-directed boards of legal inquiry and research, but essentially . . . arbiters of legal questions presented and argued by the parties.’”) (citations omitted).