



In the Matter of:

SHAUN JOHN SPARKS,

ARB CASE NO. 09-095

COMPLAINANT,

ALJ CASE NO. 2009-STA-021

v.

DATE: June 30, 2009

**RICH WILSON BLACKTOP
PAVING COMPANY,**

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Respondent:

Alan Satyr, Esq., *Littler Mendelson, P.C.*, Chicago, Illinois

FINAL DECISION AND DISMISSAL ORDER

Shaun John Sparks filed a complaint with the Department of Labor's Occupational Safety and Health Administration (OSHA) alleging that Rich Wilson Blacktop Paving Company violated the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA),¹ and its implementing regulations,² when it discharged him for reporting safety violations. After an investigation, OSHA found

¹ 49 U.S.C.A. § 31105 (West 2008), as amended by the Implementing Recommendations of the 9/11 Commission Act of 2007, P.L. 110-53, 121 Stat. 266 (Aug. 3, 2007). Section 405 of the STAA provides protection from discrimination to employees who report violations of commercial motor vehicle safety rules or who refuse to operate a vehicle when such operation would violate those rules.

² 29 C.F.R. Part 1978 (2008).

that Wilson Blacktop fired Sparks for disciplinary reasons and dismissed the complaint.³ Sparks objected to OSHA's findings and timely requested a hearing before a Labor Department Administrative Law Judge (ALJ).⁴

On February 24, 2009, the ALJ issued a Notice of Assignment and Hearing and a pre-hearing order. Following a teleconference call with the parties' attorneys, the ALJ set a hearing date for July 13, 2009.

On April 10, 2009, the ALJ granted Wilson Blacktop's motion to compel Sparks's responses to its discovery requests, noting that she had directed the parties to complete discovery by April 23, 2009. Subsequently, Sparks's attorneys filed a motion to withdraw on the grounds that they did not know Sparks's whereabouts and had been unable to contact him by telephone or at his address. The ALJ ordered Sparks to show cause why his attorneys' motion should not be granted.

On April 16, 2009, Wilson Blacktop filed a motion to dismiss Sparks's complaint on the grounds that he had failed to prosecute his claim. The ALJ permitted Sparks's attorneys to withdraw as requested and issued a second show cause order to Sparks, noting that failure to respond to her order would result in dismissal of Sparks's complaint with prejudice.

On May 14, 2009, the ALJ issued a Recommended Order of Dismissal (R. O. D.). She noted that both show cause orders were mailed to Sparks's address of record by regular mail and by FedEx, but that Sparks did not respond. The ALJ dismissed Sparks's complaint for failure to prosecute and abandonment.

The ALJ forwarded her recommended decision and the administrative record to the Administrative Review Board (ARB or Board) pursuant to the STAA's automatic review provisions.⁵ The Secretary of Labor has delegated to the Board her authority to issue final agency decisions under the STAA.⁶ When reviewing STAA cases, the ARB is bound by the ALJ's factual findings if supported by substantial evidence in the record considered as a whole.⁷ The ARB reviews the ALJ's legal conclusions de novo.⁸

³ OSHA's Findings and Order, Jan. 22, 2009.

⁴ See 29 C.F.R. § 1978.105.

⁵ See 29 C.F.R. § 1978.109(c)(1).

⁶ Secretary's Order 1-2002 (Delegation of Authority and Responsibility to the Administrative Review Board), 67 Fed. Reg. 64,272 (Oct. 17, 2002); 29 C.F.R. § 1978.109(a).

⁷ 29 C.F.R. § 1978.109(c)(3); *BSP Trans, Inc. v. U.S. Dep't of Labor*, 160 F.3d 38, 46 (1st Cir. 1998); *Castle Coal & Oil Co., Inc. v. Reich*, 55 F.3d 41, 44 (2d Cir. 1995).

On May 27, 2009, the ARB issued a Notice of Review and Briefing Schedule reminding the parties of their right to file briefs in support of or in opposition to the ALJ's recommended order within thirty days of the ALJ's decision, or by June 15, 2009.⁹ Neither Wilson Blacktop nor Sparks responded.

Dismissal as a sanction for failure to prosecute is a matter within the sound discretion of the administrative law judge.¹⁰ The ARB has observed that "administrative law judges must necessarily manage their dockets in an effort to achieve the orderly and expeditious disposition of cases. Thus, the Board will affirm an ALJ's recommended decision and order on the grounds of abandonment, where the facts dictate that a party has failed to prosecute his or her case."¹¹

Sparks did not respond to the ALJ's orders to show cause or Wilson Blacktop's motions to compel and to dismiss his complaint. Nor could Sparks's attorneys contact him to assist in pursuing his complaint. We have reviewed the record in this matter and conclude that the ALJ correctly applied the law to the facts and acted within her discretion in dismissing Sparks's complaint. It is clear that, by failing to obey the ALJ's orders and by not demonstrating good cause, Sparks abandoned his right to pursue his STAA claim. Furthermore, Sparks has failed to present any argument to this Board in opposition to the ALJ's R. O. D. Accordingly, the ARB **ACCEPTS** the ALJ's Recommended Order and **DISMISSES** Sparks's complaint.

SO ORDERED.

WAYNE C. BEYER
Chief Administrative Appeals Judge

OLIVER M. TRANSUE
Administrative Appeals Judge

⁸ See *Roadway Express, Inc. v. Dole*, 929 F.2d 1060, 1066 (5th Cir. 1991).

⁹ See 29 C.F.R. § 1978.109(c)(2).

¹⁰ *Ripley v. National Equip. Servs., Inc.*, ARB No. 06-015, ALJ No. 2005-STA-058, slip op. at 2 (ARB Feb. 27, 2007). The regulation at 29 C.F.R. § 18.39(b)(2008) provides in pertinent part that a "request for hearing may be dismissed upon its abandonment."

¹¹ *Somerson v. Eagle Express Lines, Inc.*, ARB No. 06-023, ALJ No. 2004-STA-012, slip op. at 3 (ARB Nov. 30, 2006) (citations omitted).