



In the Matter of:

REBECCA S. CLAYPOOLE,
COMPLAINANT,

ARB CASE NO. 10-064

ALJ CASE NO. 2008-STA-002

v.

DATE: April 26, 2011

U.S. XPRESS ENTERPRISES, INC.,
RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Joanne Royce, Administrative Appeals Judge, and Lisa Wilson Edwards, Administrative Appeals Judge

FINAL DECISION AND ORDER DISMISSING COMPLAINT

The Complainant, Rebecca S. Claypoole, filed a complaint with the United States Department of Labor's Occupational Safety and Health Administration on June 1, 2007, alleging that the Respondent, U.S. Xpress Enterprises, Inc., terminated her employment in violation of the employee protection provisions of the Surface Transportation Assistance Act of 1982, as amended and re-codified (STAA),¹ and its implementing regulations.² Specifically, Claypoole alleged that U.S. Xpress fired her because she

¹ 49 U.S.C.A. § 31105 (Thomson/West Supp. 2010). The STAA protects employees from discrimination when they report violations of commercial motor vehicle safety rules or when they refuse to operate a vehicle when such operation would violate those rules or endanger the driver or the public.

² 29 C.F.R. Part 1978 (2010).

complained that she was exposed to carbon monoxide and diesel fumes while driving one of U.S Xpress's trucks.³

After an investigation, an OSHA Regional Administrator, acting for the Secretary of Labor, found that Claypoole engaged in protected activity when she reported to U.S. Xpress that exhaust was leaking into the truck cab and making her ill. But the Regional Administrator found that U.S. Xpress addressed Claypoole's concerns and accommodated her need to obtain medical treatment and recuperate. The Regional Administrator further found that U.S. Xpress terminated Claypoole's employment for legitimate nondiscriminatory reasons, including an unsatisfactory safety record.⁴

Claypoole requested a formal hearing and the case was assigned to a Department of Labor Administrative Law Judge (ALJ). In response to U.S. Xpress's Second Renewal of Motion to Dismiss, the ALJ dismissed Claypoole's complaint because she failed to comply with orders of the court, failed to respond to U.S. Xpress's discovery requests, and failed to prosecute her complaint.⁵ Upon review of the ALJ's R. D. and the record below,⁶ we agree that the ALJ properly dismissed Claypoole's complaint and we summarily affirm his decision.

In summarily affirming the ALJ's Decision and Order, we limit our comments to the most critical points. Courts possess the "inherent power" to dismiss a case on their own initiative for lack of prosecution.⁷ This power is "governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases."⁸ Like the courts, the Department of Labor's Administrative Law Judges and this Board must necessarily manage their dockets in an effort to "achieve the orderly and expeditious disposition of cases." Thus,

³ Recommended Order of Dismissal (R. D.) at 1.

⁴ Secretary's Findings (Aug. 31, 2007).

⁵ R. D. at 5. The case is now before the ARB pursuant to the STAA's automatic review provisions. 49 U.S.C.A. § 31105(b)(2)(C); *see* 29 C.F.R. § 1978.109(c)(1). The ARB "shall issue a final decision and order based on the record and the decision and order of the administrative law judge." 29 C.F.R. § 1978.109(c).

⁶ After the ALJ forwarded the R. D. to the Board, we issued a Notice of Review and Briefing Schedule to the parties reminding them of their right to file briefs in support of or in opposition to the R. D. U.S. Xpress submitted a letter indicating its support for the ALJ's decision and that it did not intend to file a brief. Claypoole did not file a brief opposing the R.D.

⁷ *Link v. Wabash R R. Co.*, 370 U.S. 626, 629-30 (1962).

⁸ *Id.* at 630-631.

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.⁹

The R. D. catalogs the ALJ's exhaustive attempts to give Claypoole every opportunity to prosecute her case.¹⁰ Enlargements of time to obtain counsel and comply with discovery orders were followed by show cause orders and additional enlargements of time to respond. As of January 13, 2010, U.S. Xpress had spent over two years attempting to obtain discovery responses from Claypoole. The ALJ, cognizant of Claypoole's pro se status and claims of incapacity due to illness,¹¹ was extremely patient, but even his patience had its rational and appropriate limits.

By Order issued January 14, 2010, the ALJ gave Claypoole one last opportunity to show cause why her claim should not be dismissed on the grounds of abandonment. Claypoole filed no response. She has also failed to present any argument opposing the ALJ's dismissal to the Board. Accordingly, we find that the ALJ properly determined that Claypoole failed to prosecute her case, and we **ACCEPT** his recommendation to **DISMISS** her complaint.

SO ORDERED.

JOANNE ROYCE
Administrative Appeals Judge

LISA WILSON EDWARDS
Administrative Appeals Judge

⁹ *Belajonas v. Load One Inc.*, ARB No. 09-135, ALJ No. 2009-STA-027, slip op. at 2 (ARB Nov. 18, 2009); *Kruml v. Patriot Express*, ARB No. 03-015, ALJ No. 2002-STA-007, slip op. at 4-5 (ARB Feb. 25, 2004); *Assistant Sec'y for OSH & Reichelderfer v. Bridge Transp., Inc.*, ARB No. 02-068, ALJ No. 2001-STA-040, slip op. at 3 (ARB Aug. 29, 2003).

¹⁰ R. D. at 2-5.

¹¹ Although Claypoole claimed that she was unable to meet the discovery deadlines because she was incapacitated due to illness and mental stress, she was unable to provide any medical reports substantiating her claim that she was too ill to participate in discovery. R. D. at 3.