



IN THE MATTER OF:

KELLY SORENSON,

ARB CASE NO. 16-005

COMPLAINANT,

ALJ CASE NO. 2015-STA-001

v.

DATE:

JUN 20 2016

TERRACARE ASSOCIATES, LLC,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

ORDER DENYING MOTION FOR RECONSIDERATION

On January 28, 2016, the Administrative Review Board issued an Order Granting Motion to Strike Complainant's Brief and Amending Briefing Schedule. In this Order, the Board rejected Complainant's non-conforming brief,¹ but noting his pro se status, gave him another opportunity to file a conforming brief.

The Board received Sorenson's brief on February 26, 2016. Even though the Board had plainly warned Sorenson that if his brief did not contain a certificate of service stating that the brief had been served on Respondent and its counsel, the addresses where it was served, the date on which it was served and the signature of the person who served the brief, the Board could dismiss his appeal without further order, Sorenson inexplicably failed to attach such a certification.

Nevertheless, the Board gave Sorenson one more chance to file his brief in this case. The Board ordered that on or before March 15, 2016, Sorenson must provide the Board with a certificate of service as described in the Board's January 28, 2016 Order. The Board again cautioned that if it did not receive a certificate establishing that he served his brief on Respondent and its counsel by that day, the Board would dismiss his appeal without further order.

¹ The document that Sorenson submitted for filing was a copy of Terracare's Response to Complainant's Objections to Secretary's Findings and Request for a Hearing with hand-written comments. There was no indication on the document that Sorenson had served the document on Respondent or its counsel.

The Board did not receive a copy of a certificate of service attesting to service of the brief Sorenson filed on February 26, 2016, on Respondent and its counsel as provided in the Board's March 4, 2016 order. Accordingly, on March 22, 2016, the Board issued an Order dismissing Sorenson's appeal for failing to submit a certificate of service, as ordered.

After the Board had issued its order, but also on March 22, 2016, the Board's Clerk's office received a copy of a different brief from Sorenson than had previously been filed,² with no certificate of service, but including priority mail receipts showing that the new brief had been sent to Respondent and its counsel. There was no certificate of service showing that brief Sorenson filed on February 26, 2016, was served on Respondent or its counsel.

On April 8, 2016, Sorenson filed a document titled "Reconsider this Case." This document had no certificate of service showing that it had been served on Respondent and its counsel. Given the Board's numerous attempts to impress upon Sorenson that any document filed with the Board must be filed on Respondent and its counsel, the Board refused to file this document.

On June 6, 2016, Sorenson filed a Motion for Reconsideration with a statement that it had been served on both Respondent and its counsel. On June 13, Respondent filed a Response to the Motion for Reconsideration urging the Board to deny Sorenson's motion.

On March 22, 2016, the Board dismissed Sorenson's appeal because he did not comply with its order to provide a copy of a certificate of service showing that he had served his February 26th brief on Respondent and its counsel. In its January 28th Order, the Board had warned Sorenson, "If the brief is not timely filed or if it does not include a certificate of service stating that the brief has been served on Respondent and its counsel, the addresses where it was served, the date on which it was served, and the signature of the person who served the brief, the Board may dismiss Sorenson's appeal without further order." Even so, when Sorenson nevertheless attempted to file a brief without the certificate, the Board gave Sorenson one more chance to provide the required certificate of service for the February 26th brief. When he did not file the certificate for the brief as ordered, the Board dismissed his case.

² Although both the Administrative Law Judge and the Board had provided Sorenson with the proper address, including room number, to which Board filings must be sent, the address on the envelope sent to the Board did not include the room number of the Board's Clerk's office. This omission may account for the fact that, although Sorenson sent his response priority mail express on March 14, 2016, the Board did not receive it until more than a week later.

In his Motion for Reconsideration, Sorenson does not explain why he failed to file a certificate for the February 26 brief as ordered. Thus, Sorenson has provided the Board with no grounds for reconsidering the Board's dismissal of his appeal.

FOR THE ADMINISTRATIVE REVIEW BOARD:



Janet R. Dunlop
General Counsel