



In the Matter of:

LATONYA L. GRIFFIN,

ARB CASE NO. 16-042

COMPLAINANT,

**ALJ CASE NOS. 2015-STA-049
2015-STA-053**

v.

DATE: March 29, 2016

FIRST STUDENT, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

ORDER DISMISSING PETITION FOR REVIEW

On February 2, 2016, a Department of Labor Administrative Law Judge (ALJ) issued a Decision and Order Granting in Part and Dismissing in Part Respondents' Motions for Summary Decisions (D. & O.) in this case arising under the whistleblower protection provisions of the Surface Transportation Assistance Act of 1982 (STAA) and its implementing regulations.¹ In that D. & O., the ALJ denied the Motions for Summary Decision filed by both Respondents (First Student, Inc., and North American Central School Bus, LLC). The ALJ anticipated setting a date for hearing in Complainant LaTonya Griffin's case once "First Student has an opportunity to respond to the new allegation raised in *Williams v. First Student, Inc.*, (Case No. 2015-STA-00050)."²

¹ 49 U.S.C.A. § 31105 (Thomson Reuters 2007 & Supp. 2015); 29 C.F.R. Part 1978 (2015). Before the ALJ, Complainant's case was consolidated with two other complainants' cases: *Williams v. First Student, Inc.*, ALJ Nos. 2015-STA-050, -063 (Feb. 2, 2016) and *Herron v. North Am. Cent. Sch. Bus, LLC*, ALJ No. 2015-STA-055 (Feb. 2, 2016).

² D. & O. at 19.

On February 17, 2016, Griffin filed a petition requesting the Administrative Review Board to review the ALJ's D. & O.³ The Secretary of Labor has delegated authority to issue final agency decisions in cases arising under the STAA to the Board. This delegation also includes the authority "to review interlocutory rulings in exceptional circumstances, provided such review is not prohibited by statute."⁴

Because the ALJ has not yet issued a decision on the merits in this case, Complainant's petition is for interlocutory review (i.e., review of a non-final decision). But although the Board may accept interlocutory appeals in "exceptional" circumstances,⁵ it is not the Board's general practice to accept petitions for review of non-final dispositions issued by an ALJ.⁶

Accordingly, the Board ordered Complainant to show cause no later than March 21, 2016, why the Board should not dismiss her interlocutory appeal. The Board cautioned Complainant that failure to timely respond to this Order may result in dismissal of the appeal without further order.⁷

³ Secretary's Order No. 2-2012 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 77 Fed. Reg. 69,378 (Nov. 16, 2012); 29 C.F.R. § 1978.110(a). Although Complainant's petition includes an inside address indicating that it was sent to the ARB, the ARB did not receive a copy directly. We received our copy from the Office of Administrative Law Judges, which forwarded a copy of the petition to the Board's attention.

⁴ 77 Fed. Reg. 69,379, § 5(c)(66).

⁵ Secretary's Order No. 02-2012 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 77 Fed. Reg. 69,378, 5(c)(66) (Nov. 16, 2012).

⁶ Should the ALJ ultimately deny Complainant's complaint, she may file a timely petition asking the ARB to review any errors of fact or law that she alleges the ALJ made.

⁷ *Accord Edmonds v. TVA*, ARB No. 05-02, ALJ No. 2004-CAA-015, slip op. at 3 (ARB July 22, 2005).

Complainant has not filed a timely response to the Board's Show Cause Order and thus has failed to demonstrate extraordinary circumstances supporting her request for interlocutory appeal. Accordingly, we **DISMISS** her petition for review.

FOR THE ADMINISTRATIVE REVIEW BOARD:

Janet R. Dunlop
General Counsel

Note: Questions regarding any case pending before the Board should be directed to the Board's paralegal specialists.

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