



**In the Matter of:**

**DOUGLAS A. COUPAR,**

**ARB CASE NO. 05-108**

**COMPLAINANT,**

**ALJ CASE NO. 2005-WPC-002**

**v.**

**DATE: March 13, 2008**

**UNICOR (FEDERAL PRISON  
INDUSTRIES),**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

***For the Complainant:***

**Douglas A. Coupar, *pro se*, Lompoc, California**

***For the Respondent:***

**Douglas S. Goldring, Esq., *Federal Prison Industries, Inc.*, Washington,  
District of Columbia**

**FINAL DECISION AND ORDER DISMISSING APPEAL**

**BACKGROUND**

On July 5, 2005, the Administrative Review Board issued a Notice of Appeal and Order Establishing Briefing Schedule (Briefing Order) in this case arising under the Federal Water Pollution Control Act (WPCA).<sup>1</sup> The Briefing Order provided, "The

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<sup>1</sup> 33 U.S.C.A. § 1367 (West 2001). The Secretary of Labor has delegated her authority to issue final administrative decisions in cases arising under the WPCA to the Administrative

Complainant may file an initial brief, not to exceed thirty (30) double-spaced typed pages, on or before **August 4, 2005**. If the Complainant fails to file the initial brief on time, the Board may dismiss the Complainant's appeal."

Douglas Coupar, the Complainant, failed to file a brief as provided in the Briefing Order. Accordingly, we ordered Coupar to show cause why the Board should not dismiss his appeal on the grounds that he had failed to timely prosecute it<sup>2</sup> and allowed the Respondent, Unicor (Federal Prison Industries) to file a reply to Coupar's response to this order.

Both parties responded to the Board's order. Recognizing that dismissal with prejudice is "a severe sanction reserved for extreme circumstances,"<sup>3</sup> we gave Coupar one more opportunity to file an opening brief and cautioned him that the Board would grant no additional enlargements of time absent a demonstration of exceptional circumstances precluding the filing of the opening brief.<sup>4</sup>

Nevertheless, Coupar failed either to file a timely brief or to request additional time in which to file it. On March 7, 2008, the Board received the Respondent's Motion to Dismiss, in which Unicor argues that the Board should dismiss Coupar's appeal because he has failed to diligently prosecute it. We agree that dismissal of the appeal is appropriate.

## DISCUSSION

Courts possess the "inherent power" to dismiss a case for lack of prosecution.<sup>5</sup> This power is "governed not by rule or statute but by the control necessarily vested in

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Review Board. 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. §§ 24.1, 24.8 (2007). The WPCA's implementing regulations, found at 29 C.F.R. Part 24, have been amended since Coupar filed his complaint. 72 Fed. Reg. 44,956 (Aug. 10, 2007). We need not decide here whether the amendments would apply to this case, because even if the amendments applied, the amended provisions are not at issue in this case and thus the amendments would not affect our decision.

<sup>2</sup> See e.g., *McQuade v. Oak Ridge Operations Office*, ARB No. 02-087, ALJ Nos. 1999-CAA-007 to 010 (ARB Oct. 18, 2002); *Pickett v. TVA*, ARB No. 02-076, ALJ No. 2001-CAA-018 (ARB Oct. 9, 2002).

<sup>3</sup> See, e.g., *Meade v. Grubbs*, 841 F.2d 1512, 1520 (10th Cir. 1988).

<sup>4</sup> Order Re-Establishing the Briefing Schedule (Jan. 8, 2008).

<sup>5</sup> *Link v. Wabash Railroad Co.*, 370 U.S. 626, 630 (1962).

courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.”<sup>6</sup> In *Mastrianna v. Northeast Utilis. Corp.*,<sup>7</sup> the Board dismissed a complaint in a case in which the complainant failed to adequately explain his failure to comply with the Board’s briefing schedule. The Board explained that it has the inherent power to dismiss a case for want of prosecution in an effort to control its docket and to promote the efficient disposition of its cases.<sup>8</sup>

Coupar has had more than two and one-half years to file an opening brief, but he has failed to do so. Considering that Coupar is proceeding in this appeal without representation by counsel and that he is incarcerated, this Board has afforded him expansive latitude in achieving compliance with the Board’s procedural requirements. This latitude, however, is not without bounds. As the Eleventh Circuit has observed:

In the courts, there is room for only so much lenity. The district court must consider the equities not only to plaintiff and his counsel, but also to the opposing parties and counsel, as well as to the public, including those persons affected by the court’s increasingly crowded docket. ... Deadlines are not meant to be aspirational; counsel must not treat the goodwill of the court as a sign that, as long as counsel tries to act, he has carte blanche permission to perform when he desires. A district court must be able to exercise its managerial power to maintain control over its docket .... This power is necessary for the court to administer effective justice and prevent congestion.[<sup>9</sup>]

Coupar has had more than two and one-half years to file an opening brief in this case, but he has failed to do so. Although he has been able to contact the Board both in writing and by telephone in the past, he has not done so since the Board issued the Order Re-establishing the Briefing Schedule, nor has he filed an opening brief as ordered.

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<sup>6</sup> *Id.* at 630-631.

<sup>7</sup> ARB No. 99-012, ALJ No. 1998-ERA-033 (Sept. 13, 2000).

<sup>8</sup> *Id.*, slip op. at 2. *Accord Muggleston v. EG & G Def. Materials*, ARB No. 04-060, ALJ No. 2002-SDW-004, slip op. at 2 (ARB June 30, 2004); *Blodgett v. Tenn, Dep’t of Env’t & Conservation*, ARB No. 03-043, ALJ No. 2003-CAA-007, slip op. at 2 (ARB Mar. 19, 2004).

<sup>9</sup> *Young v. City of Palm Bay, Fla.*, 358 F.3d 859, 864 (2004) (citations omitted).

Thus, he has demonstrated a lack of due diligence. Accordingly, because Coupar has failed to timely file his opening brief, after the Board gave him ample opportunities to do so, we **DISMISS** his appeal.

**SO ORDERED.**

**M. CYNTHIA DOUGLASS**  
**Chief Administrative Appeals Judge**

**DAVID G. DYE**  
**Administrative Appeals Judge**