

**U.S. Department of Labor**

Office of Administrative Law Judges  
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**Issue Date: 03 March 2005**

Case Nos. 2004-ERA 18  
2004-ERA-19

In the Matter of

VINA COLLEY,

Complainant,

v.

U.S. DEPARTMENT OF ENERGY,

and

SCIENCE AND ENGINEERING ASSOCIATES, INC.,  
A wholly owned subsidiary of Apogen Technologies,

Respondents.

**RECOMMENDED DECISION AND ORDER DISMISSING COMPLAINTS**

These proceedings arise under Section 211 of the Energy Reorganization Act of 1974 ("Act"), as amended 42 U.S.C. 5851, and the applicable regulations issued thereunder at 29 C.F.R. Part 24. To the extent that they are not pre-empted by Part 24, the Rules of Practice and Procedure before the Office of Administrative Law Judges, 29 C.F.R. Part 18, are also applicable. A hearing has been requested by the Complainant on the determinations made by the U.S. Department of Labor. The Complainant alleges that the above-named Respondents have engaged in conduct that violates the Act.

The above-captioned cases have been assigned to the undersigned for the purpose of conducting a formal hearing and deciding the matters at issue. In order to facilitate the conduct of the hearing, on January 7, 2005, I ordered the parties to submit to the undersigned, no later than February 7, 2005, mutually agreeable hearing dates between February 22, 2005 and March 25, 2005. The parties were also directed to submit an

estimated length of time necessary to present their respective cases.

On February 6, 2005 a response was received from Science & Engineering Associates, Inc. (Respondent Employer). No response to my order was received from the Complainant. In the Respondent Employer's response to my order it related that attempts were made to communicate with the Complainant in order to ascertain mutually agreeable hearing dates. Such attempts to contact the Complainant were made by representatives of Respondent Employer and the U.S. Department of Energy (DOE) by telephone and by email. Respondent Employer reports in its response that after Complainant was contacted by email by a DOE representative, the Complainant stated that she was not available for any of the dates suggested. The Complainant did not offer any alternate dates for hearing.

The Complainant's email response to the DOE clearly reflected, in my opinion, an uncooperative approach by her. Therein the Complainant simply rejected suggested dates and failed to offer any alternative dates for hearing or to indicate any willingness to discuss hearing dates. Rather, the Complainant makes a series of demands of the DOE representative.

On February 15, 2005, I issued an Order to Show Cause to the Complainant why the complaints should not be dismissed for her failure to comply with my order to submit mutually agreeable hearing dates. The Complainant filed a response by fax on February 25, 2005, (notwithstanding the fact that prior authorization had not been obtained in accord with the Rules of Practice and Procedure at 29 C.F.R. §18.3(f)(2)) followed by a hard copy received on February 28, 2005. As the Complainant's response was posted on February 25, 2005, it is considered timely. However, contrary to 29 C.F.R. §18.3(a), it does not appear that the response was served on other parties to this proceeding. The only service reflected is on former administrative law judge, Nahum Litt, who is neither a party to this proceeding nor has he entered an appearance as a representative of any party herein. Failure to properly effect service is fatal to acceptance of the Complainant's response and for that reason could be stricken. However, I will nevertheless consider the content of the response as it relates to my earlier order to establish hearing dates.

In her response, the Complainant states that she, "will be prepared to go to hearing, with the representative of my choice, with full and fair discovery." However, the Complainant states

in her response that her "...chosen representative is Edward A. Slavin, Jr., who filed with DOL ARB on December 19, 2004 a Motion to Reconsider its illegal order, a South African Apartheid-style banning order intended to intimidate, coerce, restrain and silence nuclear and environmental whistleblowers." Mr. Slavin has been suspended by the Tennessee Supreme Court from the practice of law and the Office of Administrative Law Judges has given reciprocal effect to that order. See Board of Professional Responsibility of the Supreme Court of Tennessee v. Edward A. Slavin, Jr., No. M2003-00845-SC-R3-BP (Tenn. August 27, 2004) (holding Mr. Slavin will be suspended from practice in Tennessee for two years); In the Matter of the Qualifications of Edward A. Slavin, Jr., 2004-MIS-5 (September 28, 2004) (holding Mr. Slavin is suspended from practice before the Office of Administrative Law Judges, Department of Labor). Likewise, Mr. Slavin has been suspended from practicing before the Administrative Review Board (ARB). See In re Slavin, ARB No. 04-172 (October 20, 2004) (holding Mr. Slavin is suspended from practice before the ARB until he is reinstated in Tennessee). The Complainant asks that this proceeding be delayed until such time when Mr. Slavin's various motions and appeals are ruled on by the ARB, Court of Appeals and the U.S. Supreme Court. (I note that the Supreme Court denied Mr. Slavin's request to stay order of the Tennessee Supreme Court's order of suspension, see <http://www.supremecourtus.gov/docket/04a260.htm>). Until such time, Complainant states in her response, she "should not be harassed any further on a trial date."

Although the Complainant, at this point in time, contends to be pro se, the current filing, as well as an earlier one in the administrative file, clearly appears to be written by an attorney. In fact, having dealt with Mr. Slavin on a number of occasions over the past several years, his writing style, characterized by arcane vocabulary, verbose recitals of unsupported allegations, mischaracterizations of persons, parties, events and evidence, endless string citations that may or may not be relevant to anything under consideration, whininess and the constant portrayal of himself and his client as the down-trodden underdog, is plainly recognizable. It is clear to me that despite suspension by the Tennessee Supreme Court, this Office and the ARB, Mr. Slavin, in defiance of the multiple orders of suspension, continues to practice law and is obviously advising this Complainant and preparing documents on her behalf. On the other hand, if I am incorrect on this point, the pleadings thus far submitted in this case, if written by the Complainant, show an uncanny legal ability by a lay-person. If

that is so, the Complainant would be quite capable of representing herself in this matter.

The Complainant's request to stay the setting of any hearing in this case is unrealistic and unreasonable. It may take years before all the legal maneuverings are resolved either for or against Mr. Slavin. If the Complainant were to think about it, she does herself a disservice by delaying any hearing until such time as Mr. Slavin's fate is determined. She does not ask time to seek other representation, rather she is adamant that she be represented by Mr. Slavin. That seems to be the path she has chosen, and it is on that basis I enter my recommended order in this case. The Complainant cannot have it both ways by complaining that the "DOL takes years to adjudicate whistleblower cases..." yet seeking to delay a hearing for some indeterminate length of time.

Moreover, nowhere in her response to the show cause order does the Complainant address her failure to respond in any fashion to my earlier order pertaining to submitting mutually agreeable hearing dates. Her response clearly indicates a position that she is simply not willing to go to hearing except on her terms. This approach reflects an uncooperativeness that is not acceptable.

The regulations governing these proceedings at 29 C.F.R. §24.6 provide:

(e)(4) *Dismissal for cause.* (i) The administrative law judge may, at the request of any party, or on his or her own motion, issue a recommended decision and order dismissing a claim:

(A) Upon the failure of the complainant or his or her representative to attend a hearing without good cause; or

(B) Upon the failure of the complainant to comply with a lawful order of the administrative law judge.

(ii) In any case where a dismissal of a claim, defense, or party is sought, the administrative law judge shall issue an order to show cause why the dismissal should not

be granted and afford all parties a reasonable time to respond to such order. After the time for response has expired, the administrative law judge shall take such action as is appropriate to rule on the dismissal, which may include a recommended order dismissing the claim, defense or party.

Id.

In Billings v. Tennessee Valley Authority, 91-ERA-12 (ARB June 26, 1996), an Administrative Law Judge issued an order to show cause why the case should not be dismissed due to the failure of Complainant to comply with an earlier pre-hearing order. As in this case, the Complainant's response in Billings avoided the issue, and did not contain a denial that he failed to comply with the judge's pre-hearing order. The ARB held that the judge's dismissal of the complaint with prejudice was proper pursuant to 29 C.F.R. § 24.5(e)(4)(i)(B).

Moreover, an Administrative Law Judge may, on his or her own motion, dismiss a complaint upon the failure of the complainant to comply with a lawful order. 29 C.F.R. § 24.5(e)(4)(i)(B). In this regard, an administrative agency's power to control its docket is similar to that of a court. Dismissal with prejudice is warranted where there is a clear record of delay or contumacious conduct and a lesser sanction would not better serve the interests of justice. Consolidation Coal Co. v. Gooding, 703 F.2d 230, 232-33 (6th Cir. 1983).

In this case, it is clear to me that because of the tact taken by the Complainant, this case may be continually stalled. The Complainant has had ample opportunity to seek other representation upon notice of Mr. Slavin's suspension, but chose not to do so. The Complainant could have responded to my order to establish hearing dates, but chose not to. I could acquiesce in the Complainant's game of delay by giving her yet another chance to be cooperative, but I choose not to. In view of my recommended order dismissing the complaints herein, I find that other motions made in the Complainant's response are moot.

RECOMMENDED ORDER

It is RECOMMENDED that the Complaints filed in this case be DISMISSED due to the Complainant's failure to comply with the lawful order of an Administrative Law Judge.

A

DANIEL J. ROKETENETZ  
Administrative Law Judge

**NOTICE OF APPEAL RIGHTS:** This Recommended Decision and Order will automatically become the final order of the Secretary unless, pursuant to 29 C.F.R. § 24.8, a petition for review is timely filed with the Administrative Review Board, United States Department of Labor, Room S-4309, Frances Perkins Building, 200 Constitution Ave., N.W., Washington, DC 20210. Such a petition for review must be received by the Administrative Review Board within ten business days of the date of this Recommended Decision and Order, and shall be served on all parties and on the Chief Administrative Law Judge. See 29 C.F.R. §§ 24.7(d) and 24.8.