



In the Matter of:

TIMOTHY L. STEFFENHAGEN,

ARB CASE NO. 04-034

COMPLAINANT,

ALJ CASE NO. 04-CAA-3

v.

DATE: May 20, 2004

SECURITAS SVERIGE, AB,

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Edward A. Slavin, Jr., Esq., *St. Augustine, Florida*

For the Respondent:

Guy D. Thomas, *Securitas Security Services USA, Inc., Chicago, Illinois*

FINAL DECISION AND ORDER

BACKGROUND

Timothy L. Steffenhagen filed a complaint pursuant to the Energy Reorganization Act (ERA), 42 U.S.C.A § 5851 (West 1995), alleging that his employer, Securitas Sverige had retaliated against him in violation of the ERA's whistleblower protection provisions. A Department of Labor Administrative Law Judge issued a Recommended Decision and Order Dismissing Complainant's Request for a Hearing (R. D. & O.) on December 16, 2003. The ALJ found that, as provided in 29 C.F.R. § 24.6(e)(4), dismissal was proper because Steffenhagen had failed, in violation of applicable regulations, to serve his request for a hearing on the named Respondents.

Steffenhagen petitioned the Administrative Review Board for review of the ALJ's R. D. & O. On January 8, 2004, the Board issued a Notice of Appeal and Order Establishing Briefing Schedule. The Board sent this Notice by certified mail and

Steffenhagen signed for it on January 12, 2004, and David B. Wallace signed for the copy sent to Steffenhagen's counsel, Edward Slavin, on January 13, 2004. Pursuant to that Order, Steffenhagen's initial brief was due on or before February 6, 2004. Steffenhagen failed to file a timely brief in compliance with the Board's briefing order. Securitas Sverige filed a Motion for Order of Dismissal based upon Steffenhagen's failure to timely file his brief.

On March 26, 2004, the Board issued an Order requiring Steffenhagen to show cause no later than April 8, 2004, "why the Board should not dismiss his appeal for failure to file a brief in support of his petition for review as ordered." The Board sent the Order by certified mail and Steffenhagen signed for his copy on April 2, 2004, and Wallace signed for Slavin's copy on April 2nd as well. Steffenhagen did not timely file a response to the Board's Show Cause Order.

On April 9, 2004, Steffenhagen filed a Motion to Reschedule Filing citing the "short, mailed notice and unexpected schedule conflicts and *sequalae*." Steffenhagen also noted, "Today is Good Friday; one of counsel's clients, a tenured full Professor was hospitalized yesterday after an unexpected, retaliatory committee recommendation that he be fired. Steffenhagen requested that "he kindly be afforded until April 24 to file a response." In response Securitas Sverige filed a Motion in Opposition of Complainant's Motion to Reschedule Filing and Motion for Order of Dismissal.

Steffenhagen did not file a response to the Board's Order on April 24. On April 30, 2004, Steffenhagen filed Complainant's Response to Order to Show Cause and Motion to Strike Employer's Non-Lawyer Filings (Complainant's Resp.). In explanation of his failure to timely file his brief Steffenhagen stated:

Mr. Steffenhagen's failure to file a brief earlier should be excused because it has not delayed the adjudication of this case and he and his counsel did not know of the briefing deadline due to the press of other matters, and the employer waived its right to complain.

Complainant's Resp. at 2.

DISCUSSION

Courts possess the "inherent power" to dismiss a case for lack of prosecution. *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630 (1962). 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." *Id.* at 630-631. In *Mastrianna v. Northeast Utilities Corp.*, ARB No. 99-012, ALJ No. 98-ERA-33, slip op. at 2 (Sept. 13, 2000), 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. *Id.*.

Steffenhagen has failed to demonstrate good cause for his failure to comply with the Board's briefing schedule and to timely file his brief. In essence, Steffenhagen contends that he may disregard the Board's deadlines with impunity, file at his leisure and that his counsel has no responsibility for tracking and adhering to the Board's deadlines. We disagree. As the Eleventh Circuit Court of Appeals recently held:

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.

Young v. City of Palm Bay, Fla., 358 F.3d 859, 864 (2004)(citations omitted).

Moreover both Steffenhagen and his counsel were well aware of the consequences of his failure to file a timely brief in accordance with the Board's briefing Order. In *Steffenhagen v. Securitas Sverige AR*, (*Steffenhagen I*), ARB No. 03-139, ALJ No. 2003-SOX 024 (ARB Jan.13, 2004), a case involving the same parties and in which Slavin represented Steffenhagen, the Board dismissed Steffenhagen's appeal because he failed to file a brief in compliance with the Board's briefing schedule. Furthermore, as we noted in *Steffenhagen I*:

Slavin's refusal to comply with the Board's briefing order in this case is not an isolated incident. *See e.g., McQuade v. Department of Energy*, ARB No. 02-087, ALJ Nos. 99-CAA-7, 8, 9, 10 (ARB Oct. 18, 2002); *Pickett v. Tennessee Valley Auth.*, ARB No. 02-076, ALJ No. 01-CAA-18 (ARB Oct. 9, 2002). *Cf., Somerson v. Mail Contractors of America*, ARB No. 03-055, ALJ No. 02-STA-044 (ARB Nov. 25, 2003)(brief of complainant represented by Slavin struck because the brief was not filed in compliance with Board's briefing order).

Steffenhagen I at 3. *See also Blodgett v. Tennessee Dep't of Env't and Conservation*, ARB No 03-138, ALJ No. 03-CAA-015 (ARB Mar. 22, 2004)(appeal dismissed because complainant represented by Slavin failed to timely file his brief): *Blodgett v. Tennessee*

Dep't of Env't and Conservation, ARB No. 03-043, ALJ No. 03-CAA-007 (ARB Mar. 19, 2004)(same); *Gass v. Lockheed Martin Energy Systems, Inc.*, ARB No. 03-093, ALJ No. 2000-CAA-022 (ARB Jan. 29, 2004)(same).

In *Steffenhagen I*, we recognized that Steffenhagen was not personally responsible for the failure of his attorney to either timely file a brief or a motion for enlargement based on good cause, but that ““Petitioner voluntarily chose this attorney as his representative in the action, and he cannot now avoid the consequences of the acts or omissions of this freely selected agent.”” *Steffenhagen I* at 4-5, *citing Link*, 370 U.S. at 633-634 (quoting *Smith v. Ayer*, 101 U.S. 320, 326 (1879)). In this case, not only did Steffenhagen freely choose Slavin as his attorney, our decision in *Steffenhagen I* put Steffenhagen on notice of the serious ramifications of his attorney’s failure to timely file his briefs, yet he apparently took no precautions to guarantee that Slavin timely filed his brief in accordance with the Board’s order.

Accordingly, finding that Steffenhagen has failed to prosecute his case, we **DISMISS** his complaint.

SO ORDERED.

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

OLIVER M.TRANSUE
Administrative Appeals Judge