



In the Matter of:

DAVID STONE,

ARB CASE NO. 08-113

COMPLAINANT,

ALJ CASE NO. 2007-SOX-021

v.

DATE: July 31, 2008

INSTRUMENTATION LABORATORY SpA, et al.,

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

R. Scott Oswald, Esq., *Employment Law Group*, Washington, D.C.

For the Respondent:

Robert M. Shea, Esq., *Morse, Barnes-Brown, & Pendleton, PC*, Waltham, Massachusetts

FINAL ORDER OF DISMISSAL

On January 29, 2007, the Complainant, David Stone, filed a complaint with the United States Department of Labor's Occupational Safety and Health Administration alleging that his employer, Instrumentation Laboratory, had retaliated against him in violation of the whistleblower protection provisions of the Sarbanes-Oxley Act of 2002 (SOX).¹ On September 6, 2007, a Department of Labor Administrative Law Judge issued an Order Granting Respondent's Motion for Summary Decision Dismissing Complaints and Order Denying Complainant's Motion to Stay Summary Decision in this case. Stone

¹ 18 U.S.C.A. § 1514A (West 2002).

filed a petition for review with the Administrative Review Board (Board) on September 24, 2007. The Secretary of Labor has delegated to the Board her authority to issue final agency decisions under SOX.²

On November 8, 2007, the Board received a letter from Stone's counsel indicating his intention "to bring an action for de novo review in the appropriate district court of the United States." If the Board has not issued a final decision within 180 days of the date on which the complainant filed the complaint and there is no showing that the complainant has acted in bad faith to delay the proceedings, the complainant may bring an action at law or equity for de novo review in the appropriate United States district court, which will have jurisdiction over the action without regard to the amount in controversy.³ Accordingly, we ordered the parties to show cause why the Board should not dismiss Stone's appeal pursuant to 29 C.F.R. § 1980.114. Stone filed a response stating that he had filed an action for de novo review in the United States District Court for the District of Maryland. Because Stone was pursuing his case in District Court, the Board dismissed Stone's appeal, ARB No. 07-122.

On July 1, 2008, the District Court for the District of Maryland ordered the Board to reinstate David Stone's case and to issue a final ruling within 90 days. The Board reinstated his case and issued an expedited briefing schedule. On July 15, 2008, Stone filed with the district court a motion to amend and certify a permissive interlocutory appeal. Thereafter, on July 24, 2008, Stone requested the Board to stay proceedings pending the district court's ruling on Stone's motion to certify an interlocutory appeal. Because the Board remained under the district court's order to issue a decision in the case within 90 days of the date on which we reinstated the case, we denied that motion.

Subsequently, on July 29, 2008, Stone informed the Board that he declined to file a brief with the Board in accordance with the Board's briefing order because "[he] believes that the ARB does not properly have jurisdiction over this matter since Stone filed his SOX claim in the United States District Court."⁴ Stone's refusal to file an initial brief constitutes a failure to prosecute his case.⁵ The Board's authority to effectively

² Secretary's Order No. 1-2002, 67 Fed. Reg. 64,272 (Oct. 17, 2002); 29 C.F.R. § 1980.110(a)(2007).

³ 18 U.S.C.A. § 1514A(b)(1)(B); 29 C.F.R. § 1980.114. As is the usual case, by the time the Board received the petition for review, the 180-day period for deciding the case had already expired.

⁴ Notice of Intention Not to File Brief at 1.

⁵ Courts "possess the 'inherent power' to dismiss a case for lack of prosecution." *Solnicka v. Washington Pub. Power Supply Sys.*, ARB No. 00-009, ALJ No. 1999-ERA-019, slip op. at 3 (ARB Apr. 25, 2000); *Reid v. Niagara Mohawk Power Corp.*, ARB No. 03-039, ALJ No. 2002-ERA-003, slip op. at 4 (ARB Dec. 16, 2003) (dismissing case for failing to file initial brief).

manage its affairs, including the authority to require compliance with Board briefing orders, is necessary to “achieve orderly and expeditious disposition of cases.”⁶ This is especially true in this case given the district court’s order requiring the Board to issue a decision within 90 days. This Board has authority to issue sanctions, including dismissal, for a party’s failure to comply with the Board’s orders and briefing requirements.⁷ Accordingly, we **DISMISS** Stone’s appeal (as reinstated per the district court’s order) because he has declined to prosecute it before the Board and the Recommended Decision and Order Dismissing the Complaint becomes the Department of Labor’s final order in this case.

SO ORDERED.

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

WAYNE C. BEYER
Administrative Appeals Judge

⁶ *Link v. Wabash*, 370 U.S. 626, 630-31 (1962).

⁷ *See Blodgett v. TVEC*, ARB No. 03-043, ALJ No. 2003-CAA-007 (ARB March 19, 2003) (dismissing complaint for failure to comply with briefing order); *cf.* Fed. R. App. P. 31(c) (allowing dismissal as sanction for failure to file a conforming brief); Fed R. App. P. 41(b) (permitting courts to dismiss a complaint for failure to comply with court orders).