



**Issue Date: 09 November 2004**

In the Matter of

FLORENCE STINGER  
Complainant

v.

APOGEN TECHNOLOGIES (formerly Science &  
Engineering Associates, Inc.)  
Respondent

Case No. 2004-ERA-00020

**ORDER TO SHOW CAUSE**

**I**

By *Order of Continuance and Rescheduling Hearing* issued on August 25, 2004, the hearing in this case, which previously had been scheduled for August 26, 2004, was rescheduled to begin at 9:30 a.m. on Monday, November 8, 2004. Moreover, the parties were ordered to file their pre-hearing statements not later than October 12, 2004. The complainant did not file a pre-hearing statement. Then neither the complainant nor a representative on her behalf appeared at the hearing. In response, the respondent moved for a default judgment against the complainant.

While this case was pending before OSHA, complainant was represented by attorney Edward Slavin. However, when the case was docketed with this Office for hearing, the complainant was informed by Associate Chief Judge Thomas Burke that Mr. Slavin had been denied the authority to appear before this Office by an order issued by Judge Burke on March 31, 2004. Complainant requested that Judge Burke certify to the Administrative Review Board an interlocutory appeal of his refusal to permit Mr. Slavin to represent her before this Office, but that motion was denied by Judge Burke on June 9, 2004. At that time, the case was assigned to me for hearing and decision. On June 10, 2004, I issued an order setting this case for hearing on August 26, 2004. In that notice, I once again informed the complainant that Mr. Slavin could not represent her in this case, and I strongly advised her to retain another attorney. Notwithstanding all of these orders, on July 22, 2004 Mr. Slavin filed a notice of appearance as the complainant's counsel in this case. That same day, I sent a letter to Mr. Slavin reiterating that he cannot represent the complainant before this Office. We also attempted to telephone the complainant in order to schedule a conference call, but complainant never answered the phone and my legal technician, Brenda Smith, left several voice mail messages. On August 25, 2004, the complainant faxed a letter to Ms. Smith acknowledging the voice mail messages and, stating once again that she is being represented by Mr. Slavin. She also stated that Mr. Slavin had appealed her case to the ARB which, if true, has not been communicated to me and which is of

no consequence in any event since the ARB has not issued an order accepting an interlocutory appeal in this case.<sup>1</sup> Complainant ended her letter stating “I do not wish to be contacted further by DOL, regarding this case,” and if we had further questions we should contact “my attorney Edward Slavin ....” Then, on September 23, 2004, I sent the complainant another letter stating once again that Mr. Slavin is not her attorney in this case. I also pointed out to her that Mr. Slavin had recently been suspended from the practice of law for two years by the State of Tennessee. I once again advised her to get another attorney to represent her in this case, and made it clear that “absent extraordinary circumstances” the November 8, 2004 hearing was not going to be postponed. Complainant never responded to this letter or took any further action in this case.

It appears that the complainant believes she is free to ignore the orders of the Judges in this Office because she does not agree with them. But that is not the way things work. Both Judge Burke and I made it very clear to the complainant that Mr. Slavin cannot and does not represent her in this case; that an interlocutory appeal regarding Mr. Slavin’s status had not been certified to the ARB; and that the hearing was going to take place as scheduled. Nevertheless, she has refused to participate in this case. She did not file a pre-hearing statement, as she was ordered to do; respond to respondent’s *Motion for Summary Decision*; or appear for the hearing.

Twenty-nine C.F.R. §18.39(b) provides that an administrative law judge may dismiss a case if it is abandoned by the party requesting the hearing. By failing to file a pre-hearing statement, respond to the motion for summary dismissal and appear at the hearing, it would seem that the complainant has abandoned this case.

An administrative law judge may also dismiss a case under 29 C.F.R. §18.6(d)(2)(v) due to a party’s failure to comply with an order of the court. The complainant was ordered to file a pre-hearing statement and did not do so.

Under these circumstances, the complainant is **ordered to show cause** why this case should not be dismissed as abandoned and/or due to her failure to comply with the order to file a pre-hearing statement.

## II

Respondent also has moved for the case to be dismissed in accordance with its *Motion for Summary Decision*. It is respondent’s position that the complaint does not state a claim which would fall under the employee protection provisions of the Energy Reorganization Act. The complainant is ordered to file a response to the *Motion for Summary Decision* explaining why she believes her claim falls under the jurisdiction of the employee protection provisions of the Energy Reorganization Act.

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<sup>1</sup> On October 20, 2004, the Administrative Review Board issued an order suspending Mr. Slavin from practice before the Board.

**The complainant's response to both parts of this order shall be filed not later than December 3, 2004.**

**A**

JEFFREY TURECK