



**In the Matter of:**

**JAMES G. BLODGETT, JR.,  
COMPLAINANT,**

**ARB CASE NO. 03-138**

**ALJ CASE NO. 03-CAA-15**

**v.**

**DATE: March 22, 2004**

**TENNESSEE DEPARTMENT  
OF ENVIRONMENT AND  
CONSERVATION,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearance:**

*For the Complainant:*

**James G. Blodgett, Jr., pro se, Spring Hill, Tennessee**

### **FINAL DECISION AND ORDER**

This case arose when the Complainant, James G. Blodgett, Jr., filed a complaint alleging that his employer, the Respondent, Tennessee Department of Environment and Conservation (TDEC), engaged in “internal blacklisting” in violation of the whistleblower protection provisions of the Clean Air Act, 42 U.S.C.A. § 7622 (West 1995); the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C.A § 9610 (West 1995); the Federal Water Pollution Control Act, 33 U.S.C.A. § 1367 (West 2001); the Safe Drinking Water Act, 42 U.S.C.A. § 300(j)-9(i) (West 1991); the Solid Waste Disposal Act, 42 U.S.C.A. § 6971 (West 1995); and the Toxic Substances Control Act, 15 U.S.C.A. § 2622 (West 1998). A Department of Labor Administrative Law Judge issued a Recommended Decision and Order of Dismissal on August 8, 2003.

Blodgett filed a timely Petition for Review and Motion for Leave to File Motion for Summary Reversal in this case with the Administrative Review Board.<sup>1</sup> On August 28, 2003, the Board issued a Notice of Appeal and Order Establishing Briefing Schedule in this case permitting Blodgett to file an initial brief on or before September 29, 2003. Furthermore the Order granted Blodgett's request for leave to file a motion for summary reversal but reminded Blodgett, that the party seeking summary reversal bears a heavy burden and that accordingly, "the briefing schedule **shall not** be held in abeyance pending the filing of any such motion." Nevertheless, Blodgett failed to file a brief in support of his petition for review as ordered in the Board's August 28, 2003 order.

On November 19, 2003, Blodgett informed the Board that he was attempting to obtain new counsel, but until such time as he did, he would be appearing pro se. There is no indication on the document that Blodgett served his counsel, Edward Slavin, with the notification that he intended to proceed pro se. He also asked for time to "make the changes to the timely filings of my former council [sic] on this matter."<sup>2</sup>

Because Blodgett failed to file an initial brief in accordance with the Board's August 28, 2003 Order Establishing Briefing Schedule, on December 19, 2003, the Board ordered Blodgett to show cause no later than January 6, 2004, why the Board should not dismiss his appeal. Blodgett failed to respond as ordered.<sup>3</sup>

#### DISCUSSION

Courts possess the "inherent power" to dismiss a case for lack of prosecution. *Link v. Wabash Railroad Co.*, 370 U.S. 626, 630 (1962). This power is "governed not by

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<sup>1</sup> The Secretary has delegated authority to the Administrative Review Board to issue final decisions in appeals under the whistleblower provisions of the federal environmental statutes at 29 C.F.R. § 24.1. Sec'y Ord. 1-2002, 67 Fed. Reg. 64272 (Oct. 17, 2002).

<sup>2</sup> On October 6, 2003, Blodgett's counsel filed a Motion for Summary Reversal and Motion for Expedited Decision. By Order dated October 14, 2003, the Board returned these Motions to counsel. Although the Board had repeatedly admonished the counsel that requests for the Board to take action must be in the form of a motion with an appropriate caption, including the Board's docket number, the motions did not include the Board's docket number. The timely filings to which Blodgett referred were the Motions for Summary Reversal and Expedited Decision. On December 3, 2003, Blodgett's former counsel, Slavin, filed Complainant's Renewed Motion for Summary Reversal and Motion for Expedited Decision. This document included the Board's docket number.

<sup>3</sup> Slavin filed a Response to Order to Show Cause on January 5, 2004. Slavin stated that in his November 26, 2003 Motion for Summary Reversal, he had incorporated all his prior filings in ARB Case 03-043 and that no further briefing was needed unless TDEC or the Board identified particular issues. The Board dismissed Blodgett's complaint in ARB Case No. 03-043, in which he complained that TDEC had violated the whistleblower provisions of the environmental statutes at issue here when it terminated his employment because Blodgett failed to file a timely brief. *Blodgett v. Tennessee Dep't of Env't & Conservation*, ALJ No. 2003-CAA-7 (March 19, 2004).

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 (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. Slip op. at 2.

Accordingly, because Blodgett has failed to prosecute his case and has failed to respond to our Show Cause Order to explain his failure to file a brief pursuant to the Board’s Briefing Order,<sup>4</sup> we **DISMISS** his complaint.<sup>5</sup>

**SO ORDERED.**

**WAYNE C. BEYER**  
**Administrative Appeals Judge**

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

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<sup>4</sup> Even if Blodgett had not indicated his intention to appear pro se, Slavin’s response to the Show Cause Order was not persuasive. Slavin’s unilateral determination that no brief was necessary, communicated to the Board almost three months after the brief was due, does not excuse his failure to file a brief in compliance with the Board’s briefing order.

<sup>5</sup> Given our dismissal of Blodgett’s complaint because he failed to respond to our Show Cause Order to explain why he had failed to file a brief pursuant to our briefing order, Blodgett’s outstanding Motion for Summary Reversal and Motion for Expedited Decision is moot.