



Issue Date: 11 January 2017

In the Matter of:
FREDERICK CRUTCHFIELD
COMPLAINANT

v.

2016-AIR-00021

ATLAS AIR, INC.
RESPONDENTS

ORDER OF DISMISSAL

This case under the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21) was scheduled for a calendar call February 13, 2016.¹ On several occasions, I advised Complainant to obtain an attorney

After the Complainant failed to cooperate with initial compliance, I entered an interim order directing:

1. On or before **SEPTEMBER 1, 2016**, the parties *shall* exchange, by facsimile, hand delivery, or overnight mail to be delivered before that day's close of business, pre-hearing submissions containing the following information:
 - A. A simple statement of the issues to be decided and the relief or remedy sought.
 - B. The name and address of each witness the party expects to call. Expert witnesses must be designated on the witness list with a brief statement concerning the field of expertise and topics of proposed testimony. Any testifying expert must have submitted a written report, which is to be exchanged with the other pre-hearing submissions. See generally Fed. R. Civ. P. 26.
 - C. Copies of all documents that the party expects to offer into evidence.
 1. The parties should pre-mark and exchange copies of exhibits, along with an exhibit list. Each page of multi-page exhibits should be numbered.
 2. After the parties exchange documents that they will proffer, the parties are directed to stipulate as to authenticity and content all documents which they mutually agree should be made a part of the record. Each of the

¹ This case was initially scheduled for December 5, 2016, but I rescheduled it for February 13, 2017 after the parties requested a continuance.

stipulated documents must be properly marked prior to hearing for identification, using Exhibit numbers, page and line numbers, where appropriate.

3. Exhibits should be date stamped and copies should be provided for all parties. I prefer that the exhibits be placed into a binder. Any exhibits that are difficult to manage (large items or non-documentary evidence such as machinery or equipment), should be photographed for the record.
4. Any exhibits that will be in dispute should be accompanied by a memorandum of law.
5. The parties will meet to consider stipulations to crucial elements of the case or to findings of fact.

D. Failure to timely comply with this order may result in the exclusion of the testimony of witnesses not identified, the exclusion of documents not served on the opposing party, or other appropriate sanctions.

2. A copy of the pre-hearing submissions shall be furnished to me, via hard copy **AND** via e-mail except that the parties shall submit the exhibit lists without copies of the actual exhibits. Please note that I use Microsoft Word.

3. Post-hearing briefs will be discussed at the close of the hearing. See 24 CFR § 24.6(d)(3).

ALL DISCOVERY WILL BE TERMINATED BY NOVEMBER 10, 2016.

6. **SANCTIONS.** Unless good cause is shown, parties will not be permitted to litigate issues, call witnesses, or introduce evidence they failed to disclose at the times and in the way this order requires. Failure to comply fully with this Order subjects the offending party to sanctions.

In a second interim order, after the Complainant failed to comply, I extended the period for initial compliance to September 20, 2016 and after the Complainant sent me an ex parte email, I granted the parties leave to comment further. Respondent filed objections to the ex parte communication.

Incredibly, although I specifically ordered the parties to file a hard copy of every document, the parties failed to file many of their responses. Below is a copy of the docket in this case as of November 22, 2016:

11/1/2016	10/27/2016	Motion Received	MORCV	BY EMPLOYER, PATRICK H. OUZTS-ENC FIND ATLAS AIR, INC.'S "RESPONDENT'S MOTION TO DISMISS FOR FAILURE TO COMPLY WITH COURT ORDER AND BRIEF IN SUPPORT THEREOF"			
9/27/2016	9/20/2016	Letter	LETTR	Letter From, PATRICK H. OUZTS-ENC ATLAS AIR, INC.'s "NOTICE OF			

				OBJECTION TO EX PARTE COMMUNICATIONS" AND "RESPONSE TO COMPLAINANT'S REQUEST FOR AN EXTENSION FOR A HEARING AND PRE-HEARING DISCOVERY"			
9/20/2016	9/20/2016	Letter	LETTR	Fax From PATRICK OUZTS - ENC RESPONDENT'S NOTICE OF OBJECTION TO EX PARTE COMMUNICATIONS AND RESPONSE TO COMPLAINANT'S REQ FOR AN EXT FOR A HRG AND PRE-HRG DISCOVERY.			
9/20/2016	9/8/2016	General Admin	GADMN	SIX (6) SUBPOENAS MAILED TO PATRICK H. OUZTS			
9/20/2016	9/13/2016	General Admin	GADMN	SIX (6) SUBPOENAS MAILED TO PARICK H. OUZTS			
9/20/2016	2/13/2017	Hearing Rescheduled	HRGRS	HEARING RESCHEDULED FROM 12/05/2016 TO 02/13/2017 AT 9:30AM LOCATION:MIAMI SECOND INTERIM ORDER			
9/20/2016	9/15/2016	Motion Received	MORCV	BY CLAIMANT, ELLEN HAM-ENC ATLAS AIR, INC. AND FREDERICK CRUTCHFIELD'S JOINT MOTION FOR CONTINUANCE			
9/15/2016	9/15/2016	Letter	LETTR	Fax From ELLEN HAM - ENC RESPONDENT'S JOINT MOTION FOR CONTINUANCE.			
9/13/2016	9/8/2016	Letter	LETTR	Letter From, ELLEN C. HAM- APPLICATION AND REQUEST FOR ISSUANCE OF SUBPOENA TO PRODUCE DOCUMENTS			
9/9/2016	7/26/2016	Order	ORDER	Order SECOND INTERIM ORDER			
9/1/2016	9/1/2016	General Admin	GADMN	SOLOMON TO KASIE CRUTCHFIELD; BRIDIE C. HARRISON-RE: PRE-HEARING SUBMISSIONS			
9/1/2016	9/1/2016	Letter	LETTR	Letter From, FRED CRUTCHFIELD- PRE-HEARING SUBMISSIONS			
9/1/2016	8/31/2016	Letter	LETTR	Letter From, PATRICK H. OUZTS TO FREDERICK CRUTCHFIELD-ENC RESPONDENT ATLAS AIR, INC.'s PRE-HEARING SUBMISSIONS			
8/16/2016	8/8/2016	Letter	LETTR	Letter From, PATRICK H. OUZTS- THROUGH TNE ENC NOTICE OF APPEARANCES PURSUANT TO 29 C.F.R. SECTION 16.22(a), LEANNE C. MERMAN AND PATRICK H. OUZTS WILL ALSO REPRESENT ATLAS AIR, INC.; ELLEN C. HAM WILL REMAIN AS THE ATTORNEY OF RECORD FOR ATLAS AIR, INC.			
8/8/2016	8/8/2016	Letter	LETTR	Fax From PATRICK OUZTS - ENC NOTICE OF APPEARANCS, L. C.			

				MERMAN & P. H. OUZTS WILL ALSO REPRESENT ATLAS AIR, ELLEN C.HAM WILL REMAIN AS THE ATTORNEY OF RECORD FOR ATLAS AIR, INC.			
8/1/2016	7/26/2016	Motion Received	MORCV	BY CLAIMANT, ELLEN C. HAM-ENC JOINT MOTION FOR EXTENSION OF TIME			
7/28/2016	7/26/2016	Order	ORDER	Order INTERIM ORDER			
7/26/2016	7/26/2016	Letter	LETTR	Fax From ELLEN HAM - ENC JOINT MOTION FOR EXTENSION OF TIME.			
7/26/2016	7/21/2016	Letter	LETTR	Letter From ELLEN HAM - ADV OF ATTY OF RECORD FOR EMPLOYER, ADV OF TRYING TO REACH OUT TO OFFICE REGARDING A QUESTION WITH THE PROVIDED DATE TO SUBMIT PRE-HEARING SUBMISSIONS.			
7/26/2016	7/21/2016	Letter	LETTR	Letter From ELLEN HAM - ADV OF ATTY OF RECORD FOR EMPLOYER, ADV OF TRYING TO REACH OUT TO OFFICE REGARDING A QUESTION WITH THE PROVIDED DATE TO SUBMIT PRE-HEARING SUBMISSIONS.			
7/21/2016	7/21/2016	Letter	LETTR	Fax From ELLEN HAM - ADV OF ATTY OF RECORD FOR EMPLOYER, ADV OF TRYING TO REACH OUT TO OFFICE REGARDING A QUESTION WITH THE PROVIDED DATE TO SUBMIT PRE-HEARING SUBMISSIONS.			
7/21/2016	7/21/2016	Letter	LETTR	Fax From ELLEN HAM - ADV OF CONTACTING KEERAT PANNU IN REGARDS TO REQUESTING A TELEPHONE CONFERENCE TO DISCUSS CERTAIN TERMS OF JUDGE SOLOMON'S NOTICE OF ASSIGNMENT.			
6/9/2016	12/5/2016	Notice of Hearing	NOHRG	HEARING WITH JUDGE SOLOMON AT 9:30AM NOTICE OF HEARING			
5/26/2016		Assignment	ASNMT	CASE ASSIGNED TO SOLOMON, DANIEL			
5/11/2016		Hearing Site Set	HRGSS	LOCATION: WEST PALM BEACH - FL			
5/10/2016		Docketed	DOCKD	CASE DOCKETED			

As noted above, Respondent filed a Motion to Dismiss on November 1, 2016. I am directed to 29 C.F.R. § 18.57(b):

If a party . . . fails to obey an order to provide or permit discovery . . . the judge may issue further just orders. They may include the following: . . . [d]ismissing the

proceeding in whole or in part; or [r]endering a default decision and order against the disobedient party.

Respondent submitted a supplemental filing by email but failed to file the hard copy, so I will not consider it.

On November 22, 2016, I received another ex-parte email from Complainant; the service sheet does not list record counsel. Complainant states in full:

Dear Honorable Judge Solomon,

Since the beginning of this process opposing council has taken full advantage of my lack of council and your own discontent for my lack of knowledge of legal procedure. They have even used deliberate trickery to lure me into violating procedure in an attempt to win favoritism of the court. I was informed by Gloria Colon of OSHA that I would be offered assistance with regard to what it is that the court or opposing council is asking. It is obvious I do not fully understand the instructions as they are expressed in lawyer terms in which they attended a university to comprehend. In my case I put my life on the line serving in our in our nations military preserving our Constitution and way of life in which most to include opposing council takes for granted and willfully abuses. My opponent has not only certified attorney's but and entire team of no less than four on this case that consume me daily. That hardly seems fair and or Constitutional.

I submitted what I understood to be pretrial submissions in which you were displeased with. I have asked opposing council to describe what exactly it is they are requesting. They only respond with "We can't give you legal advice." So I motioned for an extension being that you urged if not ordered me to retain adequate council in which I am close to finalizing. Two attorney's are examining the case. Local Attorney Shante Potts and or D.C. Attorney Doug Harnett. While I still actively search for council, I cannot rush the process any faster than I already am. POGA (Project On Government Accountability) and GAP (Government Accountability Project) are assisting with these efforts. Opposing council offered a joint motion for an extension completely omitting my reason for my filing such motion thus abusing the entire process as when I filed for a single motion.

Opposing council took advantage of filing a joint motion but now wants to penalize me because my efforts are not timely enough for them. Because of their clients actions I am required to work two jobs to support my family along with attempting to represent myself on this case thus adversely affecting my health and over all mental and emotional stability in which their has a history of doing. The reason for my motion was in fact for the purpose of giving me the time to retain viable council so that procedure would be followed and I would be afforded a fair hearing. Opposing council is working aggressively to hinder that effort. In addition, Congressional Officials are inquiring as to why OSHA did not conduct an investigation in the first place. There are still ongoing investigations involving the respondent by various agencies that are still active.

Opposing council is well aware of the additional investigations involving their client as well as the growing interest of this case by the media, well known attorney's, and over-site organizations that specialize on these matters. Opposing council has motioned to

dismiss the case in a desperate attempt to avoid litigation with competent and experienced council rather than a peaceful mediation that I have offered repeatedly and they have refused.

I also want to address my past efforts to correct the recipient that this court has sent correspondence to. In previous correspondence with this court I requested that all mail be sent to myself rather than my wife who the envelope has been addressed to for whatever reason. She is not named in this matter. I further advised should the court insist on making her a party to this matter that she be afforded an interpreter as English is not her first language. I would like it noted that opposing council Patrick Ouzts formally objected to this correction as it would further disrupt the unfair advantage already inflicted. The only way I know what is going on is by opposing councils further threats and intimidation by email and regular mail which I find a conflict of interest being that they only tell me what they want me to know. The court documents are sent to my wife.

Please consider my objections.

Respectfully,

Fredrick Crutchfield

This response does not include:

A. A simple statement of the issues to be decided and the relief or remedy sought.

B. The name and address of each witness the party expects to call. Expert witnesses must be designated on the witness list with a brief statement concerning the field of expertise and topics of proposed testimony. Any testifying expert must have submitted a written report, which is to be exchanged with the other pre-hearing submissions.

C. Copies of all documents that the party expects to offer into evidence.

The email also failed to respond to the allegations set forth by the Respondent's Motion to Dismiss.

29 CFR §18.57(b) provides in relevant part: Failure to comply with a judge's order—

(1) For not obeying a discovery order. If a party or a party's officer, director, or managing agent—or a witness designated under §§ 18.64(b)(6) and 18.65(a)(4)—fails to obey an order to provide or permit discovery, including an order under § 18.50(b) or paragraph (a) of this section, the judge may issue further just orders. They may include the following:

(i) Directing that the matters embraced in the order or other designated facts be taken as established for purposes of the proceeding, as the prevailing party claims;

(ii) Prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;

(iii) Striking claims or defenses in whole or in part;

(iv) Staying further proceedings until the order is obeyed;

(v) Dismissing the proceeding in whole or in part; or

(vi) Rendering a default decision and order against the disobedient party;

(2) For not producing a person for examination. If a party fails to comply with an order under § 18.62 requiring it to produce another person for examination, the judge may issue any of the orders listed in paragraph (b)(1) of this section, unless the disobedient party shows that it cannot produce the other person.

(c) Failure to disclose, to supplement an earlier response, or to admit. If a party fails to provide information or identify a witness as required by §§ 18.50(c) and 18.53, or if a party fails to admit what is requested under § 18.63(a) and the requesting party later proves a document to be genuine or the matter true, the party is not allowed to use that information or witness to supply evidence on a motion or at a hearing, unless the failure was substantially justified or is harmless. In addition to or instead of this sanction, the judge, on motion and after giving an opportunity to be heard may impose other appropriate sanctions, including any of the orders listed in paragraph (b)(1) of this section.

(d) Party's failure to attend its own deposition, serve answers to interrogatories, or respond to a request for inspection—

(1) In general—

(i) Motion; grounds for sanctions. The judge may, on motion, order sanctions if:

(A) A party or a party's officer, director, or managing agent—or a person designated under §§ 18.64(b)(6) and 18.65(a)(4)—fails, after being served with proper notice, to appear for that person's deposition; or

(B) A party, after being properly served with interrogatories under § 18.60 or a request for inspection under § 18.61, fails to serve its answers, objections, or written response.

(ii) Certification. A motion for sanctions for failing to answer or respond must include a certification that the movant has in good faith conferred or

attempted to confer with the party failing to act in an effort to obtain the answer or response without the judge's action.

(2) Unacceptable excuse for failing to act. A failure described in paragraph (d)(1)(i) of this section is not excused on the ground that the discovery sought was objectionable, unless the party failing to act has a pending motion for a protective order under § 18.52(a).

(3) Types of sanctions. Sanctions may include any of the orders listed in paragraph (b)(1) of this section.

I can grant summary decision when there are no material facts in dispute. 29 CFR § 18.72, summary decision, states in part:

(a) Motion for summary decision or partial summary decision. A party may move for summary decision, identifying each claim or defense—or the part of each claim or defense—on which summary decision is sought. The judge shall grant summary decision if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to decision as a matter of law. The judge should state on the record the reasons for granting or denying the motion.

(b) Time to file a motion. Unless the judge orders otherwise, a party may file a motion for summary decision at any time until 30 days before the date fixed for the formal hearing.

(c) Procedures—

(1) Supporting factual positions. A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

(i) Citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

(ii) Showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

(2) Objection that a fact is not supported by admissible evidence. A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

In this case, the Respondent did not request Summary Decision on the merits and did not request a Motion to Compel. However, under OALJ rules of practice, the parties have a duty to comply and produce all relevant evidence.

I may impose sanctions upon:

(1) A separately filed motion; or

(2) Notice from the judge followed by a reasonable opportunity to be heard.

29 CFR §18.57 (f).

On November 22, 2016, I entered the following:

1. The hearing February 13, 2017 was **CANCELLED**.
2. The Complainant was granted to **JANUARY 1, 2017** to show cause why this claim should not be dismissed or he should be otherwise sanctioned for:
 - a. Failing to provide initial compliance as required by my notices of hearing;
 - b. Failing to honor my Second Interim Order;
 - c. Failing to co-operate in discovery;
 - d. Failure to properly respond to Respondents Motion to Dismiss.

The Complainant failed to respond. I find:

- a. He failed to provide initial compliance as required by my notices of hearing;
- b. He failed to honor my Second Interim Order;
- c. He failed to co-operate in discovery;
- d. He failed to properly respond to Respondents Motion to Dismiss.
- e. He failed to respond to the Order to Show Cause. 29 CFR §18.57 (f).

Accordingly, after having been fully advised in this matter, the case is **DISMISSED**.

**DANIEL F. SOLOMON
ADMINISTRATIVE LAW JUDGE**

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review (“Petition”) with the Administrative Review Board (“Board”) within ten (10) business days of the date of issuance of the administrative law judge’s decision. The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210, for traditional paper filing. Alternatively, the Board offers an Electronic File and Service Request (EFSR) system. The EFSR for electronic filing (eFile) permits the submission of forms and documents to the Board through the Internet instead of using postal mail and fax. The EFSR portal allows parties to file new appeals electronically, receive electronic service of Board issuances, file briefs and motions electronically, and check the status of existing appeals via a web-based interface accessible 24 hours every day. No paper copies need be filed.

An e-Filer must register as a user, by filing an online registration form. To register, the e-Filer must have a valid e-mail address. The Board must validate the e-Filer before he or she may file any e-Filed document. After the Board has accepted an e-Filing, it is handled just as it would be had it been filed in a more traditional manner. e-Filers will also have access to electronic service (eService), which is simply a way to receive documents, issued by the Board, through the Internet instead of mailing paper notices/documents.

Information regarding registration for access to the EFSR system, as well as a step by step user guide and FAQs can be found at: <https://dol-appeals.entellitrak.com>. If you have any questions or comments, please contact: Boards-EFSR-Help@dol.gov

Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-filing; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. *See* 29 C.F.R. § 1979.110(a). Your Petition must specifically identify the findings, conclusions or orders to which you object. You waive any objections you do not raise specifically. *See* 29 C.F.R. § 1979.110(a).

At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210. *See* 29 C.F.R. § 1979.110(a).

If filing paper copies, you must file an original and four copies of the petition for review with the Board, together with one copy of this decision. In addition, within 30 calendar days of filing the petition for review you must file with the Board an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and you may file an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which the appeal is taken, upon which you rely in support of your petition for review. If you e-File your petition and opening brief, only one copy need be uploaded.

Any response in opposition to a petition for review must be filed with the Board within 30 calendar days from the date of filing of the petitioning party's supporting legal brief of points and authorities. The response in opposition to the petition for review must include an original and four copies of the responding party's legal brief of points and authorities in opposition to the petition, not to exceed thirty double-spaced typed pages, and may include an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which appeal has been taken, upon which the responding party relies. If you e-File your responsive brief, only one copy need be uploaded.

Upon receipt of a legal brief filed in opposition to a petition for review, the petitioning party may file a reply brief (original and four copies), not to exceed ten double-spaced typed pages, within such time period as may be ordered by the Board. If you e-File your reply brief, only one copy need be uploaded.

If no Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. § 1979.110. Even if a Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days of the date the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. §§ 1979.109(c) and 1979.110(a) and (b).

