



**Issue Date: 08 January 2019**

**Case No.: 2019-ERA-00001**

**In the Matter of:**

**TONYA L. GEARHEART,  
Complainant,**

**v.**

**WESTINGHOUSE ELECTRIC COMPANY  
D/B/A WECTEC,  
Respondent.**

**DECISION AND ORDER DISMISSING CLAIM**

**1. Nature of Order.** The above-captioned case arises from a claim under the Energy Reorganization Act (ERA), 42 U.S.C. § 5851, and the implementing regulations at 29 C.F.R. Part 24. Pursuant to 29 C.F.R. § 18.12, the undersigned issues this Order sua sponte dismissing this claim based on Complainant's abandonment of this claim as illustrated by the failure to comply with multiple orders issued in this matter.

**2. Findings of Fact and Procedural History.**

a. On November 13, 2016, Complainant filed a whistleblower complaint alleging Respondent retaliated against her by issuing a negative performance evaluation on September 24, 2016.

b. On September 7, 2018, following an investigation by the Occupational Safety and Health Administration (OSHA), the U.S. Secretary of Labor, acting through the OSHA Regional Administrator, concluded that Respondent voluntarily provided Complainant with any form of relief it could award Complainant prior to the filing of the claim. Consequently, OSHA dismissed the complaint.

c. On October 1, 2018, Complainant objected to the Secretary's findings and requested a hearing before the Office of Administrative Law Judges (OALJ).

d. On December 12, 2018, the undersigned issued a Notice of Case Assignment and Prehearing Order, which required Complainant to file a Pleading Complaint within 14 days of the notice. Complainant failed to comply with this established deadline. As of the date of this Order, Complainant has not filed a Pleading Complaint.

e. In the Notice of Case Assignment and Prehearing Order, the undersigned scheduled a scheduling teleconference to occur on November 30, 2018 at 10:00 a.m. On November 30, 2018, the undersigned conducted a scheduling teleconference with counsel for Respondent. Complainant did not participate in the scheduling teleconference, nor did she make any attempt to contact OALJ administrative personnel regarding her inability to participate in the scheduling teleconference.

f. Additionally, on October 30, 2018, the undersigned sent Complainant a letter with a Confirmation of Intent to Proceed Pro Se form. The letter required Complainant to return the form to the undersigned within 10 business days confirming that she intended to represent herself without the assistance of counsel at the hearing. Complainant failed to comply with this established deadline. Complainant has not returned this form to the undersigned as of the date of this Order.

g. On December 12, 2018, the undersigned issued an Order to Show Good Cause For Failure To Comply With Notice of Case Assignment and Prehearing Order. This Order informed Complainant that she had failed to timely file a Pleading Complaint as required by the Notice of Case Assignment and Prehearing Order, failed to participate in the scheduling teleconference, and failed to return the pro se form. This Order required Complainant to file within 15 days a written response with the undersigned establishing good cause why the undersigned should not consider this claim abandoned. Specifically, this Order required Complainant to establish good cause for her failure to: 1) timely file a Pleading Complaint; 2) participate in the scheduling teleconference on November 30, 2018; and 3) return the pro se form. Thus, Complainant's response to the undersigned's Order must have been filed no later than December 27, 2018. The Order specifically advised Complainant that her failure to timely and fully comply with the requirements of the Order would result in the issuance of an Order of Dismissal. Complainant wholly failed to respond to the undersigned's Order to Show Cause.

### **3. Applicable Law and Analysis.**

a. *Authority to Dismiss Claim.* In all proceedings, the judge has "all powers necessary to conduct fair and impartial proceedings . . ." 29 C.F.R. § 18.12(b). This includes the power to "terminate proceedings through dismissal or remand when not inconsistent with statute, regulation, or executive order." 29 C.F.R. § 18.12(b)(7). "When a party has not waived the right to participate in a hearing, conference or proceeding but fails to appear at a scheduled hearing or conference, the judge may, after notice and an opportunity to be heard, dismiss the proceeding or enter a decision and order without further proceedings if the party fails to establish good cause for its failure to appear." 29 C.F.R. § 18.21(c). "Furthermore, the authority to dismiss a case also comes from an ALJ's inherent power to manage and control his or her docket and to prevent undue delays in the orderly and expeditious disposition of pending cases. *See Link v. Wabash Railroad Co.*, 370 U.S. 626 (1962). In addition, the Department of Labor's Administrative Law Judges "must necessarily manage their dockets in an effort to achieve the orderly and expeditious disposition of cases." *Larue v. Kllm Transport, Inc.*, ARB No. 02-024, ALJ No. 01-STA-54, slip op. at 2 (ARB July 22, 2003).

b. *Analysis.* In this case, Complainant did not comply with the undersigned's Notice of

Case Assignment and Prehearing Order by failing to file a Pleading Complaint. In addition, Complainant also failed to participate in the scheduling teleconference or return the pro se form to the undersigned. Despite Complainant's noncompliance, the undersigned afforded Complainant an additional opportunity to establish good cause for her noncompliance with orders issued in this matter. The undersigned's Order to Show Cause specifically informed Complainant that her failure to timely comply with the Order would result in the issuance of an Order of Dismissal. Despite this clear advisement, Complainant never made any required filings, nor did she file a reply to the Order to Show Cause. The undersigned appreciates that Complainant is a pro se litigant in this matter; however, her status as pro se party does not justify the complete failure to comply with all clearly established deadlines.

Consequently, consistent with the authority granted by 29 C.F.R. § 18.12, the undersigned concludes dismissal of this claim is warranted based on Complainant's failure to: 1) file a Pleading Complaint as required by the undersigned's Notice of Hearing and Prehearing Order; 2) participate in the scheduling teleconference; 3) return the pro se form; and 4) timely file a written reply to the undersigned's Order to Show Cause. The undersigned interprets Complainant's complete failure to take meaningful action in this matter as clearly demonstrating an absence of any objection to the Secretary's conclusions and her desire to abandon this claim.

**4. Ruling.** This claim is DISMISSED with prejudice.

**SO ORDERED** this day at Covington, Louisiana.

**TRACY A. DALY**  
**ADMINISTRATIVE LAW JUDGE**

NOTICE OF APPEAL RIGHTS: This Decision and Order will become the final order of the Secretary of Labor unless a written petition for review is filed with the Administrative Review Board ("the Board") within 10 business days of the date of this 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](mailto:Boards-EFSR-Help@dol.gov)

The date of the postmark, facsimile transmittal, or e-filing will be considered to be the date of filing. If the petition is filed in person, by hand-delivery or other means, the petition is considered filed upon receipt. The petition for review must specifically identify the findings, conclusions or orders to which exception is taken. Any exception not specifically urged ordinarily will be deemed to have been waived by the parties.

At the same time that you file your petition with the Board, you must serve a copy of the petition on (1) all parties, (2) the Chief Administrative Law Judge, U.S. Dept. of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8001, (3) the Assistant Secretary, Occupational Safety and Health Administration, and (4) the Associate Solicitor, Division of Fair Labor Standards. Addresses for the parties, the Assistant Secretary for OSHA, and the Associate Solicitor are found on the service sheet accompanying this Decision and Order.

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 a timely petition for review is not filed, or the Board denies review, this Decision and Order will become the final order of the Secretary of Labor. See 29 C.F.R. §§ 24.109(e) and 24.110.