



Issue Date: 25 April 2018

CASE NO.: 2017-FRS-00069

IN THE MATTER OF:

JAMEY MOODY
Complainant

v.

UNION PACIFIC RAILWAY COMPANY,
Respondent

ORDER OF DISMISSAL

This case arises under the “whistleblower” protection provisions of the Federal Railroad Safety Act (FRSA), 49 U.S.C. § 20109, as amended by Section 1521 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (“9/11 Act”) Pub. L No. 110-53. (Aug. 3, 2007), as further amended by Pub. L. No. 110-452 (Oct. 6, 2008) filed by Complainant Jamey Moody against Respondent Union Pacific Railway Company. This Order arises *sua sponte* based on Complainant’s failure to comply with the undersigned’s Notice of Hearing and Pre-Hearing Order as well as the Order to Show Cause issued on April 3, 2018.

PROCEDURAL HISTORY

On November 9, 2016, Complainant filed a complaint with the Secretary of Labor under the FRSA alleging retaliation by Respondent for making safety complaints about the new disciplinary response to emergency-braking events.

On May 18, 2017, the Secretary, acting through his agent, the Occupational Safety and Health Administration (“OSHA”), dismissed Complainant’s complaint because there was no reasonable cause to believe Respondent violated the FRSA.

On June 14, 2017, Complainant requested a hearing based upon the Secretary’s findings of May 18, 2017, that there was no merit to Complainant’s complaints of discrimination against Respondent in violation of the employee protective provision under the FRSA. Thereafter, the matter was referred to the Office of Administrative Law Judges and assigned to the undersigned.

Since it appeared Complainant was not represented by an attorney, I sent correspondence to her requiring her to notify our office in writing regarding whether she would

represent herself in this matter or would be represented by an attorney. On August 30, 2017, Complainant informed the undersigned that she was still searching for an attorney and requested additional time to complete her search. I granted her request.

On September 26, 2017, Complainant stated she was still looking for an attorney. Despite multiple attempts at contact, the undersigned has not heard from Complainant since September 2017.

On January 30, 2018, the undersigned issued a Notice of Hearing and Pre-Hearing Order, which required Complainant to file a Complaint by March 14, 2018. The Notice of Hearing and Pre-Hearing Order also stated that the “failure to comply with all aspects of this Order subjects the offending party to the exclusion of evidence at the final trial, the preclusion of issues, and other appropriate sanctions.”

On March 28, 2018, Counsel for Respondent informed the undersigned that she had not received Complainant’s OALJ Complaint as well as any initial disclosures or responses to discovery. Counsel also stated multiple attempts to reach Complainant were unsuccessful.

Like Respondent, the undersigned had also not received Complainant’s OALJ complaint as of March 28, 2018. On April 3, 2018, the undersigned issued an Order to Show Cause requiring Complainant to submit an OALJ Complaint and to show good cause why her claim should not be dismissed. The Order required Complainant to file a written response, within 7 days of receipt of the Order, and to show good cause why the claim should not be dismissed based on Complainant’s failure to comply with the requirements set forth in the Notice of Hearing and Pre-Hearing Order, including his failure to timely file an OALJ Complaint. The Order specifically stated that Complainant’s failure to fully comply would result in the dismissal of this claim. As of the date of this Order, Complainant has not filed a response to the show cause order, nor has she filed an OALJ Complaint.

APPLICABLE LAW AND ANALYSIS

As an administrative law judge for Department of Labor, I must necessarily manage my docket in an effort to “achieve the orderly and expeditious disposition of cases.” The rules of administrative practice are designed to ensure a “just, speedy, and inexpensive determination” of every ALJ proceeding. 29 C.F.R. § 18.10. In any proceeding under 29 C.F.R. Part 18, the administrative law judge shall have all powers necessary to conduct fair and impartial hearings, and may take measures necessary to enable him to discharge the duties of the office. 29 C.F.R. § 18.12(b). Among them is the power to “[t]erminate proceedings through dismissal or remand when not inconsistent with statute, regulation, or executive order.” 29 C.F.R. § 18.12(b)(7).

In the instant matter, Complainant has failed to comply with the requirements of the Notice of Hearing and Pre-Hearing Order by timely filing an OALJ Complaint. Also, Complainant has failed to comply with the April 3, 2018 Order to Show Cause by filing a response as to why the claim should not be dismissed. In the Order requiring Complainant to show good cause, she was specifically warned that a failure to respond would result in dismissal of this claim. Additionally, Complainant has not made a single filing with OALJ since objecting

to the Secretary's findings and requesting an administrative hearing. Therefore, the undersigned finds Complainant has abandoned her request for a hearing and failed to show good cause why this claim should not be dismissed.

ORDER

In view of the foregoing, **IT IS HEREBY ORDERED** that the claim in the above-captioned matter is **DISMISSED** with prejudice and Complainant's request for a hearing is **WITHDRAWN**.

IT IS FURTHER ORDERED that the formal hearing scheduled on July 30, 2018 in Little Rock, Arkansas is hereby **CANCELLED**.

SO ORDERED this 25th day of April, 2018, at Covington, Louisiana.

**CLEMENT J. KENNINGTON
ADMINISTRATIVE LAW JUDGE**

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within fourteen (14) 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. § 1978.110(a). Your Petition must specifically identify the findings, conclusions or orders to which you object. You may be found to have waived any objections you do not raise specifically. *See* 29 C.F.R. § 1978.110(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, in cases in which the Assistant Secretary is a party, on the Associate Solicitor for Occupational Safety and Health. *See* 29 C.F.R. § 1978.110(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. §§ 1978.109(e) and 1978.110(b). 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. § 1978.110(b).