

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 31 August 2015

CASE No: 2014-SOX-00051
OSHA No: 9-3290-10-020

In the Matter of:

JEFFREY KLABEN,
Complainant,

v.

SANDISK CORPORATION,
Respondent.

Order of Dismissal with Prejudice

The Employer Sandisk Corporation has moved again for an order of dismissal with prejudice because the Complainant Jeffrey Klaben failed to file the report required by the Fourth Pretrial Order. The rules of procedure recognize that a party may be compelled to make pretrial disclosures when the party fails to make them when due. See 29 C.F.R. § 18.57(a)(1).

Thrice Klaben has been granted extensions of the duty to file his initial disclosures because he had not yet retained lawyer to represent him here. Klaben has been granted reasonable extensions of the time to serve his initial disclosures. The last (fourth) pretrial order extended the time to file them until June 15, 2015.

Mr. Klaben was warned in my June 1, 2015 order that whether he has a lawyer or not, Klaben must serve his initial disclosures on Sandisk no later than 14 days from the date of that order and that the failure to do so may result in the imposition of any of the sanctions available under the rules of procedure. Sanctions include an order that strikes all or any part of a claim. 29 C.F.R. § 18.57(b)(1)(iii).

Sandisk filed another motion to dismiss on July 6, 2015 supported by the declaration of counsel that the Complainant has failed to comply with my June 1, 2015 order. To date the Complainant has not responded to this motion although his response was due by July 16, 2015. I have no reason to believe he served the initial disclosures after Sandisk's motion was filed.

The Complainant has repeatedly failed to comply with orders. He did not file the report due, nor did he serve the initial disclosures already ordered. His failure to make disclosures despite the order to do so impairs Sandisk's ability to prepare its defense. His inaction despite prodding amounts to an abandonment of the request for hearing, as well as an effort to hamper Sandisk's ability to present a defense. Both are valid reasons to dismiss the claim on the merits (*viz.*, with prejudice).

No lesser sanction is adequate, because the Complainant has done nothing substantive to move the case forward since he brought it to the OALJ for trial, despite the orders already entered. Further orders to compel would be pointless.

The current motion Sandisk filed to dismiss is granted and this matter is hereby dismissed with prejudice. The Respondent's request for attorney's fees and costs are denied.

So Ordered.

William Dorsey
ADMINISTRATIVE LAW JUDGE

San Francisco, California

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within fourteen (14) 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. § 1980.110(a). Your Petition should identify the legal 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. § 1980.110(a).

When 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 on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor. *See* 29 C.F.R. § 1980.110(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. §§ 1980.109(e) and 1980.110(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. § 1980.110(b).