



Issue Date: 21 September 2018

Case No.: 2018-SOX-00031

In the Matter of

COURTNEY W. WEBB
Complainant

v.

EDWARD JONES
Respondent

RULING ON RESPONDENT'S MOTION TO DISMISS
AND ORDER OF DISMISSAL

1. Nature of Order. The above-captioned case arises from a claim under Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VII of the Sarbanes-Oxley Act of 2002, 18 U.S.C. § 1514A (the Act). Pursuant to 29 C.F.R. §§ 18.33 and 18.70(c), Respondent filed a Motion to Dismiss based on Complainant's failure to timely file a Pleading Complaint and comply with other requirements set forth in the Notice of Case Assignment and Prehearing Order. Complainant did not respond to the motion.

2. Findings of Fact and Procedural History.

a. On November 1, 2017, Complainant filed a whistleblower complaint alleging she suffered an adverse action by Respondent when she allegedly raised concerns over the opening of fourteen fraudulent accounts.

b. On April 23, 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 Respondent did not violate the Act.

c. On May 30, 2018, Complainant objected to the Secretary's findings and requested a hearing before the Office of Administrative Law Judges (OALJ).

d. On August 8, 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 never filed a Pleading Complaint and failed to comply with this established deadline.

e. Additionally, on June 27, 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 days confirming that she intended to represent herself without the assistance of counsel at the hearing. Complainant never returned or executed the required Confirmation of Intent to Proceed Pro Se form.

f. The Notice of Case Assignment and Prehearing Order also set a scheduling teleconference to occur on September 14, 2018. On September 11, 2018, the undersigned's law clerk and attorney advisor sent Complainant and Respondent's counsel an email confirming the date and time of scheduling teleconference and instructions to initiate the teleconference. On September 14, 2018, Complainant did not participate in the established scheduling teleconference with the undersigned and counsel for Respondent. Moreover, Complainant made no attempt to contact the undersigned's administrative personnel before or after the scheduling teleconference to explain her inability or failure to participate in the scheduling teleconference.

g. On August 30, 2018, Respondent filed a Motion to Dismiss this claim on the grounds Complainant had failed to comply with the undersigned's prehearing orders. Respondent moved for an order dismissing the claim with prejudice. Complainant did not file a reply to Respondent's motion, nor did she file a motion requesting additional time to file a reply to Respondent's motion.

3. Applicable Law and Analysis.

a. *Motions to Dismiss.* A party may move to dismiss part or all of the matter for reasons recognized under controlling law, such as lack of subject matter jurisdiction, failure to state a claim upon which relief can be granted, or untimeliness. If the opposing party fails to respond, the judge may consider the motion unopposed. 29 C.F.R. § 18.70(c). 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. *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).

c. *Analysis.* In this case, Complainant did not comply with the undersigned's Notice of Case Assignment and Prehearing Order. Specifically, Complainant failed to file a Pleading Complaint and participate in the scheduling teleconference. Complainant's failure to participate in the scheduling teleconference is particularly inexcusable because she received an email from

the undersigned's administrative personnel reminding her of the scheduling teleconference in addition to receiving a written notice setting forth this requirement. Moreover, in addition to failing to comply with the undersigned's Notice of Case Assignment and Prehearing Order, Complainant also failed to comply with the undersigned's June 27, 2018 letter requiring her to execute and return a Confirmation of Intent to Proceed Pro Se form. The undersigned afforded Complainant 10 days to execute and return this form. Complainant never filed this required form or requested additional time to obtain counsel before proceeding in this matter.

Furthermore, Complainant failed to file a response to Respondent's Motion to Dismiss filed on August 30, 2018. The Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges specifically provide that the "failure to file an opposition or response within 14 days after the motion is served may result in the requested relief being granted." 29 C.F.R. § 18.33(d). Complainant did not timely comply with this deadline, nor did she request an extension to file a reply. Thus, the applicable rules unequivocally provided Complainant with the opportunity to respond and be heard on any motion filed by Respondent.

The undersigned appreciates that Complainant is a pro se litigant; however, her status as a pro se party does not justify the failure to comply with clearly established filing deadlines and participate in required scheduling teleconference. Consequently, consistent with the authority granted by 29 C.F.R. § 18.70, 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 order; 2) participate in the scheduling teleconference as required by the undersigned's order; 3) return the executed Confirmation of Intent to Proceed Pro Se form; and (4) file a reply to Respondent's Motion to Dismiss. The undersigned interprets Complainant's complete failure to take meaningful action in this matter as clearly demonstrating an absence of any objection to Respondent's Motion to Dismiss and her desire to abandon this claim.

4. Ruling.

- a. Respondent's Motion to Dismiss is GRANTED.
- b. 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

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.