

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 28 August 2009

Case No.: 2009-STA-00027

In the Matter of:

JOSEPH BELAJONAS,
Complainant,

v.

LOAD ONE INC,
BEACON INDUSTRIAL STAFFING
Respondent.

**RECOMMENDED DECISION AND ORDER OF DISMISSAL
FOR FAILURE TO OBEY ORDERS, FOR FAILURE TO
PROSECUTE CLAIM, AND FOR ABANDONMENT**

This claim of Complainant, Joseph Belajonas, against Beacon Industrial Staffing and Load One Inc., under Section 405 of the Surface Transportation Assistance Act of 1982 (STAA), 49 U.S.C. § 31105, as amended, and the applicable regulations at 29 C.F.R. Part 1978, was filed on September 19, 2008. The claim was investigated by the Occupational Safety and Health Administration (OSHA) of the U.S. Department of Labor (DOL), which dismissed the complaint with findings issued January 28, 2009. Complainant filed a request for hearing with the Chief Administrative Law Judge, and a Notice of Hearing and Pre-Hearing Order was issued on April 2, 2009. A hearing was initially scheduled in Grand Rapids, Michigan, on May 19, 2009.

On or about April 9 and 14, 2009, this tribunal was notified that Complainant, Joseph Belajonas, had died. His widow, Ms. Caroline Belajonas, requested that the hearing be rescheduled in July and that she be allowed time to prepare to prosecute her husband's claim. By correspondence dated April 7, 2009, Charles Garavaglia, Vice President, of C & G Consultants, Inc., purporting to represent Beacon Industrial Staffing and its customer, Load One Inc., and noting that the Complainant Joseph Belajonas was recently deceased of natural causes, requested that the hearing be canceled and the complaint closed. In response to the request of Ms. Belajonas, an Amendment to Notice of Hearing and Pre-Hearing Order and Order of Continuance was issued April 15, 2009, serving copies of the letter upon all interested parties, rescheduling the hearing for July 28, 2009, and modifying the initial Notice of Hearing and Prehearing Order to direct that the date for the Prehearing Exchange referred to in paragraph 1 of the Notice of Hearing be changed to Monday, July 13, and requiring that all Discovery referred

to in paragraph 4 be concluded, with requested information and materials delivered to the requesting party by close of business July 7, 2009.

On May 21, 2009, this tribunal received a copy of Respondent Beacon Industrial Staffing, Inc.'s first set of interrogatories and request for production addressed to Complainant with appropriate certification of service. On July 2, 2009, this tribunal received a request dated June 29, 2009, for dismissal of the complaint because the agent for the Complainant had failed to comply with the April 15, 2009, order and to answer Respondent's first set of interrogatories and request for production by the June 22, 2009, date specified in the Amended Order. Since then there had been no communication of any kind or indication of any compliance on behalf of the Complainant with any of the orders of this tribunal or discovery requests by Respondent since the Amendment to Notice of Hearing and Pre-Hearing Order and Order of Continuance was issued April 15, 2009, except a notice of change of Ms. Belajonas' address. An Order to Show Cause Why Claim Should Not Be Dismissed by reason of abandonment and for failure to comply with the lawful orders of this tribunal was issued on July 24, 2009, with a return date of August 4, 2009, upon the suggestion that the claim had been abandoned and should be dismissed. The order was sent to Ms. Belajonas and Respondent by certified and by regular mail. There has been no response to the order to show cause, or response of any kind on behalf of Complainant or any other interested party. Wherefore, it is recommended that it be

ORDERED that this claim be dismissed for failure to comply with the lawful orders of this tribunal; for failure to respond to Respondent's request for discovery; by reason of failure to prosecute the claim; and by reason of abandonment of this claim.

A

Edward Terhune Miller
Administrative Law Judge

NOTICE OF REVIEW: The administrative law judge's Recommended Order Approving Withdrawal of Objections and Dismissing Claim, along with the Administrative File, will be automatically forwarded for review to the Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington, DC 20210. *See* 29 C.F.R. § 1978.109(a); Secretary's Order 1-2002, ¶4.c.(35), 67 Fed. Reg. 64272 (2002).

Within thirty (30) days of the date of issuance of the administrative law judge's Recommended Order Approving Withdrawal of Objections and Dismissing Claim, the parties may file briefs with the Administrative Review Board ("Board") in support of, or in opposition to, the administrative law judge's order unless the Board, upon notice to the parties, establishes a different briefing schedule. *See* 29 C.F.R. § 1978.109(c)(2). All further inquiries and correspondence in this matter should be directed to the Board.