

**U.S. Department of Labor**

Office of Administrative Law Judges  
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**Issue Date: 16 December 2009**

CASE NO.: 2009-STA-00071

In the Matters of

**ELDRON JAMES,**  
Complainant,

v.

**SUBURBAN DISPOSAL INC.,  
ROSELLE DISPOSAL,  
ROBERT & KERRY ROSELLE,**  
Respondents.

Appearances: Complainant Pro Se

Steven Glassman, Esq.  
For Respondents

Before: Administrative Law Judge Janice K. Bullard

**RECOMMENDED DECISION AND ORDER**  
**DISMISSING APPEAL AND REQUEST FOR HEARING**

This proceeding arises under the employee protection provisions of the Surface Transportation Assistance Act, 49 U.S.C. § 31105 (“the Act” hereinafter), and implementing regulations set forth at 29 C.F.R. part 1978. The pertinent provisions of the Act prohibit the discharge, discipline, or discrimination of employees who refuse to operate a commercial motor vehicle because of apprehension of serious injury due to unsafe conditions or health matters. This decision and order is also governed by those provisions, and the provisions of 29 C.F.R. Part 18.

Complainant Eldron James filed a complaint with the Secretary against Suburban Disposal, Inc., d/b/a Roselle Disposal and Robert and Kerry Roselle, alleging violations of the employee protection provisions of the Act. Upon investigation, the Secretary found no support for the allegations, and Complainant filed a timely request for a hearing before the Office of Administrative Law Judges for the U.S. Department of Labor (OALJ). The case was thereafter assigned to me. By notice issued September 17, 2009, I scheduled a hearing for October 6, 2009 in Cranford, New Jersey. On September 25, 2009, counsel for Respondents entered his appearance, and requested a brief adjournment because of a pre-existing conflict on his calendar. In compliance with my pre-hearing Order of September 17, 2009, counsel advised that he had

contacted Complainant regarding the motion, and Complainant objected. Complainant did not otherwise respond to the motion, and by Order issued on September 28, 2009, I continued the matter, and rescheduled the hearing to commence on October 26, 2009 at 10:00 a.m. o'clock. My Order was sent to Complainant by certified mail, and receipt of the notice was acknowledged by signature of an individual at Complainant's address.

On October 26, 2009, I traveled from Cherry Hill, New Jersey, to Cranford, New Jersey, a distance of approximately 75 miles. The individually named Respondents appeared with counsel. At approximately 9:30 a.m., I received a telephone message from my staff, advising that an individual identifying herself as Complainant's wife had just called my office to inform me that Complainant was sick and would not appear. No further explanation was provided. The individual was advised by my staff that someone should appear, and that Complainant should provide a written explanation for his failure to appear. At approximately 10:00 a.m., I opened the record and advised Respondents of what had transpired. Respondent moved to dismiss the case, and I advised that I would issue an Order directing Complainant to show cause why his complaint and appeal should not be dismissed for failing to prosecute his case. Tr. at 5. Not only had Complainant failed to appear at the hearing, but Complainant did not comply with pre-hearing instructions set forth in my pre-hearing Order issued at the same time of my Notice of Hearing of September 17, 2009.

Pursuant to the Rules of Practice and Procedure Before the Office of Administrative Law Judges (the Rules) set forth at 29 C.F.R. Part 18, I have the authority to dismiss a request for hearing as abandoned. Rule 20 C.F.R. §18.39 **Waiver of right to appear and failure to participate or to appear** states as follows:

(b) *Dismissal--Abandonment by Party.* A request for hearing may be dismissed upon its abandonment or settlement by the party or parties who filed it. A party shall be deemed to have abandoned a request for hearing if neither the party nor his or her representative appears at the time and place fixed for the hearing and either (a) prior to the time for hearing such party does not show good cause as to why neither he or she nor his or her representative can appear or (b) within ten (10) days after the mailing of a notice to him or her by the administrative law judge to show cause, such party does not show good cause for such failure to appear and fails to notify the administrative law judge prior to the time fixed for hearing that he or she cannot appear. A default decision, under § 18.5(b), may be entered against any party failing, without good cause, to appear at a hearing.

By Order issued November 2, 2009, I directed Complainant to show cause in writing not more than ten (10) days from that date why his case should not be dismissed for failure to prosecute. I also invited Respondent to file submissions. Complainant did not comply with my Order within the time mandated. However, by correspondence<sup>1</sup> dated December 8, 2009, filed at my office on December 14, 2009, Complainant advised as follows:

My name is Eldron L. James and I'm respectfully sorry for not being able to appear for our Pre-Hearing on October 26, 2009. I was recovering from injuries

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<sup>1</sup> I have identified this document as ALJX-1 and admit it to the record.

that I sustained on October 4, 2009 and my Wife suffered a stroke after receiving the shocking news. On November 23, 2009 she was released from St. Joseph's Hospital in Paterson, NJ.

I would like to settle this with your Honor Judge Bullard's approval. I Humbly request a new hearing date if possible. If you need to contact me regarding this issue please do not hesitate to contact me at the above telephone no./address.

ALJX-1.

On December 15, 2009, Respondents renewed the motion to dismiss the case, pointing out inconsistencies in Complainant's December 14, 2009 correspondence. I agree with Respondents that Complainant's explanation is not fully supported. Complainant did not describe the nature and extent of the injuries he sustained, nor did he describe the circumstances underlying the alleged accident. Complainant did not explain how his injuries immobilized him or otherwise prevented him from seeking a continuance of the scheduled hearing in advance. Complainant provided no documentation in support of his contention that he was recovering from injuries sustained weeks earlier than the scheduled hearing date. When the individual purporting to be his wife contacted my office on the date of the hearing, she stated merely that Complainant was sick and would not appear. Most distressingly, this phone call on October 26, 2009 directly casts into question the allegation by Complainant that his wife suffered a stroke on October 4, 2009, and her alleged release from the hospital on November 23, 2009. It is implausible that Complainant's purported wife would call my office from her hospital bed on the morning of the hearing. Additional doubt in Complainant's assertions was created by a telephone message recorded on my staff's voice mail on December 4, 2009 at 6:46 p.m., in which an individual purporting to be Complainant asked for more time to respond to my Order to show cause, stating that he was recently released from the hospital and that he had asked his wife to call on the date of the hearing to advise that he could not attend because he was in the hospital.

I am unable to determine from Complainant's conflicting and contradictory correspondence, both written and telephonic, that injuries to him or his wife prevented him from appearing at the scheduled hearing. I further find no good cause has been established for Complainant's failure to comply with my Order to show cause why his request for a hearing should not be dismissed, because Complainant's explanations are inconsistent, contrary, and not supported by any documentary evidence. Therefore, I find that Complainant's request for a hearing should be dismissed.

### **RECOMMENDED DECISION AND ORDER**

Pursuant to 29 C.F.R. §18.39(b), it is recommended that Complainant's request for a hearing before OALJ be DISMISSED because of Complainant's failure to comply with my Orders and his failure to appear at a hearing or otherwise prosecute his case.

So ORDERED.

A

Janice K. Bullard  
Administrative Law Judge

Cherry Hill, New Jersey

**NOTICE OF REVIEW:** The administrative law judge's Recommended Decision and Order, 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 Decision and Order, the parties may file briefs with the Board in support of, or in opposition to, the administrative law judge's decision 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.