



Issue Date: 14 May 2009

CASE NO.: 2009-STA-00021

In the Matter Of:

SHAUN JOHN SPARKS

Complainant

v.

RICH WILSON BLACKTOP PAVING CO.

Respondent

RECOMMENDED ORDER OF DISMISSAL

This proceeding, which arises from a complaint of discrimination filed by Shaun Sparks under Section 31105(b)(2)(c) of the Surface Transportation Assistance Act, as amended, 49 U.S.C. §31105(b)(2)(c) (2000) and the implementing regulations at 29 C.F.R. § 1978 (2008), is set for hearing on July 13, 2009. The complaint was investigated by the Occupational Safety and Health Administration (“OSHA”) and the complaint was denied on January 22, 2009. Mr. Sparks through counsel requested a hearing before the Office of Administrative Law Judges (“OALJ”) on February 10, 2009. The Revised Notice of Hearing and Pre-Hearing Order issued on February 24, 2009, scheduled the hearing for July 13, 2009, and ordered all discovery to be completed not later than April 23, 2009.

On April 16, 2009, Respondent filed a Motion To Dismiss Complaint. In support of its motion, Respondent asserts Complainant has failed to respond to Respondent’s First Set of Interrogatories and First Requests for Production, which were due March 23, 2009. Respondent stated further it filed a Motion to Compel Response to Discovery on April 9, 2009. On April 10, 2009, I issued an Order requiring Complainant to file a response to Respondent’s Motion to Compel by April 14, 2009.¹

On April 10, 2009, Complainant’s representatives filed a Motion to Withdraw as Complainant’s Representatives. Complainant’s representatives stated they are unable to locate the Complainant by telephone or mail at his last known address, 5061 Cornell Way, Matteson, IL 60443. I issued a Show Cause Order on April 13, 2009, ordering Complainant to respond to the Motion to Withdraw by April 24, 2009. The Order was mailed to Mr. Sparks’ address of record by regular mail and Fed Ex. The regular mail copy was not returned and the Fed Ex copy was

¹ Complainant has not responded to the Order nor has he responded to Respondent’s discovery requests.

left at the front door. Complainant did not respond and I granted Complainant's representatives' Motion to Withdraw on April 28, 2009.

On April 28, 2009, I also issued an Order To Show Cause directing Complainant to show cause by May 11, 2009, why his claim should not be dismissed for failure to comply with discovery or to prosecute the claim. The order was sent to Mr. Sparks by mail and has not been returned by the Post Office. A copy was also sent by Fed Ex to Complainant's address of record and left at the front door. To date, Complainant has not responded to the April 28, 2009 Order to Show Cause why the claim should not be dismissed for failure to prosecute.

CONCLUSION

The record shows that all of the orders issued to the Complainant and Respondent's discovery requests were properly mailed to Complainant's last known address. *See* 29 C.F.R. § 18.3. Since I have received no communication from the Complainant and he has not complied with any of the orders issued herein, I will dismiss his complaint. It is provided in 29 C.F.R. §18.39(b) that a request for hearing may be dismissed upon its abandonment by the party who filed it. Moreover, an administrative law judge has the discretion under 29 C.F.R. §18.6(d)(2)(v) to dismiss a STAA complaint after a complainant has ignored an administrative law judge's discovery or other orders. *See Dickson v. Butler Motor Transit*, ARB No. 02-098, ALJ No. 01-STA-039, Slip Op. at 4 (ARB July 25, 2003). The Administrative Review Board has also held with respect to a complaint filed under the Energy Reorganization Act of 1974 (ERA), 42 U.S.C. § 5851 (1998) that it is proper to dismiss a complaint on the grounds of abandonment where the complainant has failed to provide a new mailing address and telephone number or respond to an order to show cause. *McCrumb v. Westinghouse Radiological Services, Inc.*, 89-ERA-42 (Sec'y Apr. 9, 1992). That Administrative Review Board has acknowledged the "inherent power" of the triers-of-fact to dismiss a case upon their own initiative. *Rose v. ATC Vancom, Inc.*, ARB No. 05-091 (Aug. 31, 2006).

Upon consideration of Complainant's failure to respond to the April 28, 2009 Order to Show Cause and his failure to respond to the other Orders issued herein, the complaint will be dismissed for failure to prosecute and abandonment.

ORDER

For the above-stated reasons, IT IS HEREBY RECOMMENDED that the complaint filed by Shaun John Sparks under the provisions of Section 405 of the Service Transportation Assistance Act, 49 U.S.C. §31105, be dismissed on the grounds of abandonment and failure to prosecute and that the January 22, 2009 determination of the U.S. Department of Labor, Occupational Safety and Health Administration, be reinstated as the final order in this matter.

IT IS FURTHER ORDERED that the hearing scheduled for July 13, 2009 at Chicago, Illinois is cancelled.

SO ORDERED.

A

COLLEEN A. GERAGHTY
Administrative Law Judge

Boston, Massachusetts

NOTICE OF REVIEW: The administrative law judge's Recommended Order of Dismissal, along with the administrative file, will be automatically forwarded for review to the Administrative Review Board, U.S. Department of Labor, 200 Constitution Avenue, NW, Suite S-5220, Washington, D.C. 20210. See 29 C.F.R. § 1978.109(a); Secretary's Order 1-2002, para. 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 of Dismissal, 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.