



**Issue Date: 28 January 2011**

**CASE NO.: 2011-STA-1**

**IN THE MATTER OF**

**MICHAEL EGGERS**  
**Complainant**

**v.**

**AMERIGAS PROPANE, INC.**  
**Respondent**

## **ORDER OF DISMISSAL**

### **Background**

Complainant appealed OSHA's Determination of September 14, 2010, denying him relief under the Surface Transportation Act, 49 U.S.C. §31105. The appeal was referred to this office, and by order dated October 7, 2010, the matter was scheduled for formal hearing on November 11, 2010, in Casper, Wyoming. On November 1, 2010, however, Complainant called this office and left a voice message stating he would not attend the November 11, 2010 hearing. In response to the message, this office returned Complainant's telephone call, and Complainant once again stated that he would not attend the November 11, 2010 hearing and gave his permission to dismiss his appeal.

Following that November 1, 2011, telephone conversation an order issued on November 2, 2010, cancelling the hearing set for November 11, 2010 and providing Complainant time to respond or risk a dismissal of his appeal as abandoned for failure to prosecute.

By fax received November 4, 2010, Complainant wrote a six line reply starting with the sentence "I am dropping the request and canceling the hearing case on November 11, 2009 [sic] for the appeal case of Michael Eggers against Amerigas Propane." He went on to say that he would not attend court without his main witness, Wayne Davidson, who was ill. Complainant concluded by saying "As of now the case is on hold till Wayne Davidson is in good health."

To this e-mail, I responded on November 5, 2010, requiring a 10 day reply from Complainant to 1) clarify whether he was seeking a continuance or a dismissal of his appeal and 2) if a continuance, when the matter would be ready for trial. No response was forthcoming from Complainant, so out of an abundance of caution and in an effort to protect Complainant's rights, by order dated December 7, 2010, I again set the matter for hearing on March 30, 2011. However, now by a two (2) page fax received January 7, 2011, copy of which is attached hereto, Complainant advises he definitely wants his case dismissed and not reset for trial.

### **ORDER**

Upon Complainant's request, his appeal is hereby **DISMISSED** and the hearing scheduled on March 30, 2011 is cancelled.

**So ORDERED** this 28<sup>th</sup> day of January, 2011, at Covington, Louisiana.

**A**

**C. RICHARD AVERY**  
**Administrative Law Judge**

**NOTICE OF APPEAL RIGHTS:** To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within ten (10) 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. In addition to filing your Petition for Review with the Board at the foregoing address, an electronic copy of the Petition may be filed by e-mail with the Board, to the attention of the Clerk of the Board, at the following e-mail address: ARB-Correspondence@dol.gov.

Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-mail communication; 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. § 1978.110(a). Your Petition must specifically identify the findings, conclusions or orders to which you object. You waive any objections you do not raise specifically. *See* 29 C.F.R. § 1978.110(a).

At the time 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, in cases in which the Assistant Secretary is a party, on the Associate Solicitor for Occupational Safety and Health. *See* 29 C.F.R. § 1978.110(a).

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: (1) an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and (2) 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.

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: (1) 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 (2) 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, unless the responding party expressly stipulates in writing to the adequacy of the appendix submitted by the petitioning party.

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 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. §§ 1978.109(e) and 1978.110(a). 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. §§ 1978.110(a) and (b).