

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 01 February 2012

Case No.: 2011-STA-00034

In the Matter of:

DERON FOSTER,
Complainant,

v.

BOBBY MOORE, JR.,
LMI TRANSPORT, INC.,
and QUALITY CARRIERS, INC.,
Respondents.

ORDER OF DISMISSAL

This proceeding arises under the employee protection provisions of the Surface Transportation Assistance Act of 1982, 49 U.S.C. § 31101, *et seq.*, and the regulations published at 29 C.F.R. Part 1978. Procedurally, this hearing will be conducted based upon the rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges at 29 C.F.R. Part 18.

On December 23, 2011, Respondents, Bobby Moore, Jr. and LMI Transport Inc., filed Bobby Moore, Jr.'s, LMI Transport, Inc.'s Motion to Dismiss Action for Failure of Complainant, Deron Foster, to Respond to Discovery and Failure to Prosecute. On December 27, 2011, Respondent, Quality Carriers Inc., filed Quality Carriers' Motion for Default for Complainant's Failure to Comply with Discovery. Respondents request that Complainant's case be dismissed for his failure to respond to discovery requests and for failure to prosecute his case.

On December 29, 2011, an Order was issued to Complainant to show cause by January 20, 2012, why Respondents' motions should not be granted.

The Show Cause Order, along with copies of the Respondents' motions, were sent by certified mail to the Complainant's last known address. 29 C.F.R. §18.3(c). On

January 24, 2012, the aforementioned documents were returned to this office with the following notation from the Postal Service: "return to sender[,], unclaimed[, and] unable to forward."

Accordingly, in view of the foregoing, and Complainant's failure to prosecute his complaint, his complaint is hereby **DISMISSED** with prejudice.

A

LARRY S. MERCK
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 thirty (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 (30) 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 thirty (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 (30) 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 (10) 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).