

U.S. Department of Labor

Office of Administrative Law Judges
36 E. 7th St., Suite 2525
Cincinnati, Ohio 45202

(513) 684-3252
(513) 684-6108 (FAX)



Issue Date: 11 October 2012

Case No.: 2012-STA-29

In the Matter of:

JOHN KROUTH,
Complainant,

v.

NIKKI A. GARRET, d/b/a/
G & H TRUCKING,
Respondent.

ORDER DISMISSING COMPLAINT FOR FAILURE TO PROSECUTE

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, implementing regulations found at 29 C.F.R. Part 24, and the Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges found at 29 C.F.R. Part 18.

On September 10, 2012, this Court issued an Order to Complainant to show cause why his complaint should not be dismissed for his failure to comply with the requirements of the Notice of Hearing and Prehearing Order issued on June 20, 2012.

The Show Cause Order was sent by certified mail to the Complaint's last known address. 29 C.F.R. §18.3(c). On September 24, 2012, the aforementioned document was returned to this office with the following notation from the Postal Service: "Return to sender[,] not deliverable as addressed[, and] unable to forward."

This Court possesses the inherent power to dismiss a case for lack of prosecution. *Link v. Wabash Railroad Co.*, 370 U.S. 626, 630 (1962). This Power is "governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases." *Rose v. ATC Vancom, Inc.*, ARB No. 05-091, ALJ No 2005-STA-014, slip op. at 3 (ARB Aug. 31, 2006) (citing *Link*, 370 U.S. 630-31).

Accordingly, in view of the foregoing, Complainant's complaint is hereby **DISMISSED** with prejudice.

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 fourteen (14) 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 may be found to have waived 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(b). 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(b).