



In the Matter of:

TIMOTHY STEFFENHAGEN,  
COMPLAINANT,

v.

SECURITAS SVERIGE, AR, et al.,  
RESPONDENTS.

ARB CASE NO. 03-139

ALJ CASE NO. 03-SOX-024

DATE: January 13, 2004

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

*For the Complainant:*

Edward A. Slavin, Jr., Esq., *St. Augustine, Florida*

*For the Respondents:*

Marc Johnston, Esq., *U.S. Department of Energy, Washington, DC*

## FINAL ORDER DISMISSING COMPLAINT

### BACKGROUND

On August 5, 2003, a Department of Labor Administrative Law Judge (ALJ) issued an Order Denying Motion for Remand and Dismissing Complaint (ALJ Ord.) in this case arising under the Sarbanes-Oxley Act of 2002, 18 U.S.C.A. § 1514A et seq. (West Cum. Ann. P. P. 2003). The ALJ found that the Complainant, Timothy Steffenhagen, had failed to serve notice of his complaint upon the named Respondents without good cause and that accordingly, his complaint must be dismissed. ALJ Ord. at 2. The ALJ also determined that she must deny Steffenhagen's motion to remand the

complaint to OSHA for further investigation because a controlling regulation<sup>1</sup> precluded the ALJ from granting the request.

On August 12, 2003, Steffenhagen filed a motion to vacate the ALJ's order. He also filed a protective petition for review with the Administrative Review Board (ARB or Board) and requested that no briefing order be issued "due to the pending motion to reconsider and the death of his counsel's father."

On August 13, 2003, the ALJ issued an Order Denying Motion for Reconsideration. The ALJ denied Steffenhagen's motion on the ground that she no longer had jurisdiction to rule on the motion because Steffenhagen had filed a petition for review with the ARB.

On August 28, 2003, the Board issued a Notice of Appeal and Order Establishing Briefing Schedule. Pursuant to the briefing schedule, Steffenhagen was required to file his brief on or before September 22, 2003. The briefing schedule was addressed to Steffenhagen's counsel at his official address, a post office box in St. Augustine, Florida. David B. Wallace, signing as counsel's agent, accepted delivery of the Order on September 13, 2003. Steffenhagen signed for delivery of the Order on September 2, 2003.

On September 23, 2003, the Board received two motions via facsimile from Steffenhagen – one requesting the Board to remand the case to OSHA and the other to hold the briefing schedule in abeyance. The Board declined to file these documents and returned them to Steffenhagen because of his counsel's repeated and obdurate refusal to comply with the Board's filing requirements. *See e.g., Gass v. Lockheed Martin Energy Systems*, ARB No. 03-093, ALJ No. 2000-CAA-22 (ARB July 11, 2003) (Order Returning Motion to Set Briefing Schedule); *Erickson v. United States Env'tl. Prot. Agency*, ARB Nos. 03-02, 03, 04, ALJ Nos. 1999-CAA-2, 2001-CAA-8, 13, 2002-CAA-3, 18 (ARB Oct. 17, 2002).

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<sup>1</sup> The regulation cited by the ALJ provides:

Neither the Assistant Secretary's determination to dismiss a complaint without completing an investigation pursuant to section 1980.104(b) nor the Assistant Secretary's determination to proceed with an investigation is subject to review by the administrative law judge, and a complaint may not be remanded for the completion of an investigation or for additional findings on the basis that a determination to dismiss was made in error.

29 C.F.R. § 1980.109(a).

Because Steffenhagen did not timely file a brief in accordance with the briefing order, the Board issued an Order requiring Steffenhagen to show cause why the Board should not dismiss his petition for review for failure to prosecute his case. *See McQuade v. Oak Ridge Operations Office*, ARB No. 02-087 (Oct. 18, 2002); *Pickett v. TVA*, ARB No. 02-076 (Oct. 9, 2002).

On October 3, 2003, Steffenhagen filed a motion to stay the briefing schedule pending a remand for an OSHA investigation.

In response to the Show Cause Order, Steffenhagen averred that:

[he] informed his counsel (when counsel was in Detroit or Dayton working on a STA case only two weeks after his father's death) that [he] received the Board's briefing order and that the deadline for his brief was on September 23, 2003. Counsel wrote down the date. Counsel then called ARB about the deadline on this and other cases on [Friday] September 19, 2003: he did **not** receive a response from ARB until after the close of business on [Tuesday] September 23, 2003, the following week and that response was oddly worded and rather impolite, to say the least.

Complainant's Response to Order to Show Cause at 1.

### DISCUSSION

Courts possess 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." *Id.* at 630-631. In *Mastrianna v. Northeast Utilities Corp.*, ARB No. 99-012, ALJ No. 98-ERA-33, (Sept. 13, 2000), the Board dismissed a complaint in a case in which the complainant failed to adequately explain his failure to comply with the Board's briefing schedule. The Board explained that it has the inherent power to dismiss a case for want of prosecution in an effort to control its docket and to promote the efficient disposition of its cases. Slip op. at 2.

Steffenhagen has failed to demonstrate good cause for his failure to comply with the Board's briefing schedule and to timely file his brief. In an apparent attempt to shift responsibility to Steffenhagen, Steffenhagen's counsel, Edward Slavin, asserts that on some unspecified date Steffenhagen told Slavin that his brief was due on September 23, when in fact it was due on September 22. It is not the responsibility of a client to maintain his attorney's calendar. Slavin's agent accepted service of the Board's briefing order on September 13. Steffenhagen offers no explanation for his counsel's failure to adhere to its unambiguous requirement that Steffenhagen's brief must be filed on or

before September 22. Slavin's refusal to comply with the Board's briefing order in this case is not an isolated incident. See e.g., *McQuade v. Department of Energy*, ARB No. 02-087, ALJ Nos. 99-CAA-7, 8, 9, 10 (ARB Oct. 18, 2002); *Pickett v. Tennessee Valley Auth.*, ARB No. 02-076, ALJ No. 01-CAA-18 (ARB Oct. 9, 2002). Cf., *Somerson v. Mail Contractors of America*, ARB No. 03-055, ALJ No. 02-STA-044 (ARB Nov. 25, 2003)(brief of complainant represented by Slavin struck because the brief was not filed in compliance with Board's briefing order).

Furthermore, when filing an untimely request for a stay of the briefing schedule, Slavin once again failed to comply with the Board's filing requirements even though he was well aware from previous experience that such failure would result in the Board's refusal to accept the documents. See e.g., *Gass v. Lockheed Martin Energy Systems*, ARB No. 03-093, ALJ No. 2000-CAA-22 (ARB July 11, 2003) (Order Returning Motion to Set Briefing Schedule); *Erickson v. United States Env'tl. Prot. Agency*, ARB Nos. 03-02, 03, 04, ALJ Nos. 1999-CAA-2, 2001-CAA-8, 13, 2002-CAA-3, 18 (ARB Oct. 17, 2002).

Finally, when Steffenhagen did belatedly file a motion for stay, which complied with the Board's filing requirements, Steffenhagen failed to demonstrate good cause for the stay of briefing. The only basis for the stay that Steffenhagen alleged was to remand the case to OSHA to investigate. However, whether the ALJ properly denied the request for remand was one of the very issues upon which Steffenhagen sought review. Therefore, Steffenhagen's request for a stay of briefing based on his renewed request for investigation was baseless, given the necessity of briefing to resolve the very issue of whether the ALJ properly found that applicable regulations precluded remand for investigation.

While we recognize that Steffenhagen is not personally responsible for the failure of his attorney to either timely file a brief or a motion for enlargement based on good cause, as the Board held in *Dumaw v. International Brotherhood of Teamsters, Local 690*, ARB No. 02-099, ALJ No. 2001-ERA-6, (ARB Aug 27, 2002):

Ultimately, clients are accountable for the acts and omissions of their attorneys. *Pioneer Investment Services Co., v. Brunswick Associates Limited Partnership*, 507 U.S. 380, 396 (1993); *Malpass v. General Electric Co.*, Nos. 85-ERA-38, 39 (Sec'y Mar. 1, 1994). As the Supreme Court held in rejecting the argument that holding a client responsible for the errors of his attorney would be unjust:

Petitioner voluntarily chose this attorney as his representative in the action, and he cannot now avoid the consequences of the acts or omissions of this freely selected agent. Any other notion would be wholly

inconsistent with our system of representative litigation, in which each party is deemed bound by the acts of his lawyer-agent and is considered to have “notice of all fact, notice of which can be charged upon the attorney.”

*Link v. Wabash Railroad Company*, 370 U.S. 626, 633-634 (1962) (quoting *Smith v. Ayer*, 101 U.S. 320, 326 (1879)).<sup>2</sup>

Slip op. at 5-6. Accordingly, finding that Steffenhagen has failed to prosecute his case, we **DISMISS** his complaint.

**SO ORDERED.**

**WAYNE C. BEYER**  
**Administrative Appeals Judge**

**M. CYNTHIA DOUGLASS**  
**Chief Administrative Appeals Judge**

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<sup>2</sup> The Court did note, however, “[I]f an attorney’s conduct falls substantially below what is reasonable under the circumstances, the client’s remedy is against the attorney in a suit for malpractice.” 370 U.S. at 634 n.10.