



In the Matter of:

THOMAS R. CURLEY,

ARB CASE NO. 00-013

COMPLAINANT,

ALJ CASE NO. 99-STA-39

v.

DATE: February 9, 1999

**GRAND RAPIDS IRON & METAL
COMPANY,**

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

FINAL ORDER OF DISMISSAL

Administrative Law Judge Daniel J. Roketenetz (ALJ) issued a Recommended Order of Dismissal on November 24, 1999, in this case arising under the employee protection provisions of the Surface Transportation Assistance Act of 1982, as amended, 49 U.S.C.A. §31105 (1997). This Recommended Order is now before the Administrative Review Board for review.

On August 12, 1999, the ALJ issued an Order to Show Cause why the Respondent's motion to dismiss this case due to "lack of timely notice" should not be granted. After an initial attempt to locate the Complainant was unsuccessful, the ALJ reissued the Order to Show Cause on September 21, 1999. The Complainant responded on September 28, 1999, and indicated that he did not understand the purpose of the Order. On October 18, 1999, the ALJ issued an Order Scheduling Telephone Conference. This Order scheduled a telephone conference for October 22, 1999, and directed the parties to notify the ALJ on or before October 21, 1999, of the telephone number at which the ALJ could reach them. The ALJ warned the parties in the Order that if they failed to participate in the telephone conference, he might dismiss the case or impose other appropriate sanctions. ALJ's Recommended Order of Dismissal at 1. The Complainant did not respond.

On October 26, 1999, the ALJ issued an Order to Show Cause why the case should not be dismissed because of the Complainant's "failure to make himself available and comply with the lawful order of an Administrative Law Judge." *Id.* The Complainant again failed to respond. The ALJ concluded that the Complainant had abandoned the case. Accordingly, the ALJ issued an order in which he recommended that the case be dismissed.

Pursuant to 29 C.F.R. §1978.109(a), (b), the ALJ forwarded the case to the Board to issue a final decision and order based on the record and the ALJ's recommended order. We issued a

Notice of Review and Briefing Schedule on December 3, 1999, informing the Complainant and the Respondent that they were permitted to file briefs with the Board in support of or in opposition to the ALJ's Recommended Order of Dismissal by December 24, 1999. Neither party filed a brief.

Courts possess the "inherent power" to dismiss a case on their own initiative 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. Like the courts, the Department of Labor's Administrative Law Judges and this Board must necessarily manage their dockets in an effort to "achieve the orderly and expeditious disposition of cases." Thus, the Board will affirm an ALJ's Recommended Order of Dismissal on the grounds of abandonment, where the facts dictate that a party has failed to prosecute his or her case.

In this case, the ALJ's conclusion that the Complainant has abandoned his case is supported by substantial evidence in the record. The Complainant failed to respond to the ALJ's order scheduling a telephone conference call, even when warned that failure to participate could result in the dismissal of his case. He also failed to respond to the ALJ's Order to show cause why his case should not be dismissed. Moreover, the Complainant does not even dispute before us the ALJ's finding that he has abandoned his case. The record therefore fails to disclose circumstances explaining or excusing the Complainant's failure to participate in the telephone conference or to respond to the ALJ's order to show cause why the case should not be dismissed. Although the Complainant is appearing *pro se*, there is no indication in the record that his failure to respond to the ALJ's orders scheduling the conference call and to show cause and to the Board's order permitting him to file a brief in opposition to the ALJ's Recommended Order is due to lack of legal training. The deadlines the ALJ and the Board set were readily comprehensible. *Cf. Jourdan v. Jabe*, 951 F.2d 108, 110 (6th Cir. 1991)(although it is preferable that a claim be adjudicated on its merits, if a *pro se* party has engaged in a clear pattern of delay, dismissal is proper). Accordingly, the Board adopts the ALJ's Recommended Order of Dismissal and the complaint is hereby **DISMISSED**.

SO ORDERED.

PAUL GREENBERG

Chair

CYNTHIA L. ATTWOOD

Member

E. COOPER BROWN

Member