



In the Matter of:

PATRICIA C. LARUE,

ARB CASE NO. 02-024

COMPLAINANT,

ALJ CASE NO. 01-STA-54

v.

DATE: July 22, 2003

KLLM TRANSPORT INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearance:

For the Respondent:

Silas W. McCharen, Esq., Daniel Coker Horton & Bell, Jackson, Mississippi

FINAL DECISION AND ORDER

Patricia LaRue filed a complaint alleging that the respondent, KLLM Transport Inc., retaliated against her for filing safety complaints in violation of the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA), as amended and recodified, 49 U.S.C.A. § 31105 (West 1997). A Department of Labor (DOL) Administrative Law Judge (ALJ) issued a Recommended Order of Dismissal (R. O.) of the complaint. The Administrative Review Board (Board) affirms the ALJ's order and dismisses the appeal.

BACKGROUND

LaRue filed a complaint with the DOL's Occupational Safety and Health Administration (OSHA) alleging violations of the STAA. OSHA found the complaint without merit. LaRue requested a hearing before a DOL ALJ. The ALJ scheduled the formal hearing for October 30, 2001. On October 17, 2001, LaRue's attorney, Paul O. Taylor, filed a motion requesting leave to withdraw as counsel for the Complainant because he had been unable to reach her. The ALJ conducted the hearing on October 30,

2001. LaRue did not appear, nor did anyone appear as her representative. The ALJ issued a show cause order on October 31, 2001, giving the Complainant ten days to show why the case should not be dismissed with prejudice. LaRue did not respond to the show cause order. Accordingly, the ALJ issued an R. O. dismissing the complaint. Pursuant to 29 C.F.R. § 1978.109(a), (b) (2002), the ALJ forwarded the case to the Board to issue a final decision and order based on the record and the ALJ's R. O. We issued a Notice of Review and Briefing Schedule, 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 R. O. Neither party filed a brief.

STANDARD OF REVIEW

Under the STAA, the Board is bound by the ALJ's factual findings if those findings are supported by substantial evidence on the record considered as a whole. 29 C.F.R. § 1978.109(c)(3); *BSP Transp. Inc. v. United States Dep't of Labor*, 160 F.3d 38, 46 (1st Cir. 1998); *Castle Coal & Oil Co., Inc. v. Reich*, 55 F.3d 41, 44 (2d Cir. 1995). Substantial evidence is that which is "more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Clean Harbors Env'tl. Servs. v. Herman*, 146 F.3d 12, 21 (1st Cir. 1998) (quoting *Richardson v. Perales*, 402 U.S. 389, 401 (1971)).

In reviewing the ALJ's conclusions of law, the Board, as the Secretary's designee, acts with "all the powers [the Secretary] would have in making an initial decision..." 5 U.S.C.A. § 557(b) (West 1996). *See also* 29 C.F.R. § 1978.109(c). Therefore, the Board reviews the ALJ's conclusions of law de novo. *Roadway Express, Inc. v. Dole*, 929 F.2d 1060, 1066 (5th Cir. 1991).

DISCUSSION

The ALJ's R. O. dismissing the case is grounded in LaRue's abandonment of her case when she (or her representative) failed, without explanation, to attend a scheduled hearing and then failed to respond to the ALJ's show cause order.

Courts possess the "inherent power" to dismiss a case on their own initiative for lack of prosecution. *Link v. Wabash R. R. 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 decision and order on the grounds of abandonment, where the facts dictate that a party has failed to prosecute his or her case. *Tucker v. Connecticut Winpump Co.*, ARB No. 02-005, ALJ No. 2001-STA-53, slip op. at 4 (March 15, 2002); *Curley v. Grand Rapids Iron & Metal Co.*, ARB No. 00-013, ALJ No. 99-STA-39, slip op. at 2 (Feb. 9, 1999).

The ALJ's conclusion that LaRue has abandoned her case is supported by substantial evidence in the record and well-established legal precedent. The hearing was initially scheduled for September 13, 2001, but was postponed to October 30, 2001, on the joint motion of the parties to allow more time for discovery. The Complainant's attorney withdrew from the case because LaRue made herself unavailable to discuss the upcoming hearing. The Complainant did not appear at the October 30, 2001 hearing, nor did she notify the Respondent and the ALJ that she did not intend to appear. She also failed to respond to the ALJ's order to show cause why her case should not be dismissed because of her failure to attend the hearing.

On review, the Board issued a Notice of Review and Briefing Schedule giving LaRue an additional opportunity to explain why the ALJ's finding that she had abandoned her case should be reversed. Furthermore LaRue did not respond to the Board's attempt to contact her by phone. Accordingly, the Board **AFFIRMS** the ALJ's R. O. and **DISMISSES** the complaint.

SO ORDERED.

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

WAYNE C. BEYER
Administrative Appeals Judge