

**NOT RECOMMENDED FOR FULL-TEXT PUBLICATION**

No. 06-3485

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

**FILED**  
Nov 24, 2008  
LEONARD GREEN, Clerk

COLEEN L. POWERS,	)	
	)	
Petitioner,	)	
	)	
v.	)	ON PETITION FOR REVIEW FROM A
	)	FINAL ORDER OF THE
U.S. DEPARTMENT OF LABOR,	)	ADMINISTRATIVE REVIEW BOARD
	)	
Respondent.	)	
	)	

ORDER

Before: COLE and COOK, Circuit Judges; EDMUNDS, District Judge.\*

Coleen L. Powers, a Tennessee resident proceeding pro se, petitions for review of a final order of the Department of Labor’s Administrative Review Board (Board) affirming an Administrative Law Judge’s (ALJ) decision dismissing her complaint for failure to comply with the ALJ’s orders directing her to cooperate in discovery. This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Powers filed her complaint in June 2004 with the Department of Labor’s Occupational Safety and Health Administration (OSHA), under the whistleblower provision of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), alleging that Pinnacle Airlines, Inc. (Pinnacle) retaliated against her for reporting certain safety violations. *See* 49 U.S.C. § 421211; 29 C.F.R. § 1979.101. After her claim was administratively denied, she requested a hearing before

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\*The Honorable Nancy G. Edmunds, United States District Judge for the Eastern District of Michigan, sitting by designation.

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an ALJ. The hearing was scheduled for November 2004, and the ALJ issued a Preliminary Order on August 12, 2004. Powers filed a Reply and Objections to the Preliminary Order.

In a Status Order issued August 25, 2004, the ALJ: 1) instructed Powers to limit the complainant in the caption to herself; 2) instructed Powers to limit the respondents in the caption to Pinnacle Airlines; 3) found that Powers had not stated a claim for relief under the Sarbanes Oxley Act, as Powers had alleged; 4) granted Pinnacle's Motion for a Protective Order to the extent that Pinnacle was required to respond only to interrogatories, requests for admissions, and requests for documents that were related to the potential issues in the case; and 5) provided notice to Powers that she would be held to the same standards as all litigants to the extent that she was to adhere to the "standards of civility and respect required of all who are before this Court," and that her failure to cooperate in discovery, or disobedience of the Court's orders may result in the striking of pleadings or dismissal of the complaint. The ALJ prefaced this notice with the following:

I note that, as a *pro se* litigant, the Complainant is entitled to some latitude. However, as the Respondent correctly points out, the Complainant has significant litigation experience before this Court, in connection with her previous cases, and I have repeatedly admonished her about her attacks on this Court and opposing counsel, and her behavior in the discovery process. My order in 2004 AIR 6, in which I ruled that the Respondent was not required to respond to the bulk of the discovery requests served by the Complainant, was lengthy and detailed, and certainly put the Complainant on notice that those discovery requests were not proper. Yet the Complainant served virtually identical discovery requests on the Respondent in this case, requiring the Respondent to seek a protective order from this Court.

Powers then filed a "Notice of Preliminary Objections to the ALJ Pre-Hearing and Status Orders," complaining that she did not have an adequate opportunity to respond to Pinnacle's motions that were resolved in the ALJ's orders issued August 12 and August 25. Powers claimed that she left a voicemail in the general mailbox of the ALJ's office, verbally requesting an extension of time to respond to the motions. The ALJ denied Powers an extension of time to respond, and liberally construing the pleading as one for reconsideration of the ALJ's previous order, denied reconsideration as well. The ALJ explained that Powers had, in fact, filed a reply to Pinnacle's motions, but had not addressed the motions or properly requested an extension of time.

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Powers failed to respond to Pinnacle's subsequent requests for documents and interrogatories, and began to contact officers and employees of Pinnacle directly, rather than communicating with Pinnacle's attorney, as requested. On October 5, 2004, Pinnacle filed a Motion to Compel to Comply with Discovery and for sanctions for engaging in improper communications.

On October 17, 2004, Powers faxed to the ALJ a "Motion for Continuance of Hearing and Modification of Pre-Hearing Order; & Reply, Objections, and Motion to Strike Named Persons' & Pinnacle [Airlines'] Premature/Bad Faith October 5, 2004 Motion," to which she attached volumes of documents, including several pleadings already filed in the case. The ALJ granted Pinnacle's Motion to Compel, on October 20, 2004. In her order, the ALJ stated that Powers was "well aware of her obligation to participate and cooperate in the discovery process, and the consequences of [her] failure to do so." The ALJ noted that at least one of Powers's previous AIR 21 suits against Pinnacle had been dismissed for failing to cooperate in the discovery process.

On October 25, 2004, the ALJ issued an Order Cancelling the Hearing, in which she noted: 1) Powers continued to disregard the ALJ's order to correct the caption of her pleadings by limiting the complainant to Powers and the respondent to Pinnacle; 2) Powers had filed a "Repeated October 15/17, 2004 Motion and Notice of Voluntary Dismissal," but it was unclear whether Powers was requesting an actual withdrawal of her complaint; and 3) Powers indicated in her pleadings that she would not be able to attend the scheduled hearing because of other obligations and commitments. The ALJ found that Powers had not established good cause for a continuance of the hearing, but permitted additional time for her to respond to Pinnacle's discovery requests. The ALJ also described the documents Powers submitted on October 17 as "confusing, filled with much information that has no relevance to the issues," and containing a "continuous stream of derogatory comments directed at counsel and the Court."

On November 3, 2004, Pinnacle filed a Motion to Dismiss for Failure to Comply with the Court's Orders. Powers missed the ALJ's extended deadline of October 27, 2004, for responding to Pinnacle's discovery requests, but filed a reply to Pinnacle's interrogatories on November 12. Pinnacle filed a second Motion to Dismiss on November 12. Based on Powers's failure to

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adequately respond to Pinnacle's interrogatories and for failure to respond to Pinnacle's request for documents, the ALJ issued a Recommended Decision and Order dismissing Powers's complaint, on November 16, 2004. The ALJ first determined that Powers did not intend to withdraw her complaint after she was made aware that a dismissal would be with prejudice. The ALJ then determined that Powers had refused to participate and cooperate in the discovery process, had "peppered the Court and opposing counsel with pleadings raising issues have nothing to do with this case," and had attacked the "character, integrity, and intelligence of the Court and opposing counsel." The ALJ concluded that Powers had not complied with her orders directing her to respond to the discovery requests, and had not provided any meaningful response to Pinnacle's motion for dismissal.

The Board affirmed the ALJ's decision on January 31, 2006, noting that Powers had been given an ample opportunity to comply with the ALJ's discovery orders, and had been made fully aware of the potential consequences for her failure to do so. On July 27, 2007, the Board denied Powers's motion to reconsider its decision.

On appeal, Powers challenges the Board's determination that she did not comply with the court's discovery orders, and argues that the ALJ should have held a hearing on the matter. Powers repeats the merits of her retaliation claim and alleges that she has been denied her constitutional rights under the First, Fourth, Seventh and Fourteenth Amendments. Powers requests: 1) reinstatement as a cabin crew member for Pinnacle; 2) judicial review by this court; and 3) oral argument via teleconference.

We deny the petition for review because the Board properly determined that the ALJ did not abuse her discretion in dismissing Powers's complaint for failure to comply with the ALJ's orders to cooperate in discovery. We review an agency's choice of a sanction for abuse of discretion, so long as the sanction is "within [the] statutory limits" imposed on the agency. *See Roadway Express, Inc. v. United States Dep't of Labor*, 495 F.3d 477, 484 (7th Cir. 2007). An abuse of discretion is found only when the court is left with "the definite and firm conviction that the court [or agency] below committed a clear error of judgment." *Sako v. Gonzales*, 434 F.3d 857, 863 (6th Cir. 2006).

The Department of Labor has issued regulations that govern an ALJ's sanctions for a party's failure to comply with an order. *See* 29 C.F.R. § 18.6(d)(2). This allowance is prefaced by language giving the ALJ some flexibility in how she administers the sanctions regime, under which the ALJ, "for the purpose of permitting resolution of the relevant issues and disposition of the proceeding without unnecessary delay despite such failure, may take such action in regard thereto as is just . . . ." 29 C.F.R. § 18.6(d)(2). This statutory subsection specifically permits an ALJ to render a decision against the non-complying party. 29 C.F.R. § 18.6(d)(2)(v). Moreover, the Supreme Court has held that the "inherent authority" of the courts is an independent basis for sanctioning bad faith conduct in litigation. *See Chambers v. NASCO, Inc.*, 501 U.S. 32, 44 (1991). Such sanctions may be imposed "not merely to penalize those whose conduct may be deemed to warrant such a sanction, but to deter those who might be tempted to such conduct in the absence of such a deterrent." *See Reg'l Refuse Sys., Inc. v. Inland Reclamation Co.*, 842 F.2d 150, 154 (6th Cir.1988). 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." *See Chambers*, 501 U.S. at 43 (*quoting Link v. Wabash R.R.*, 370 U.S. 626, 630-631 (1962)). Although *Chambers* involved an appeal from a district court's decision to impose sanctions, it is submitted that the Court's rationale applies equally to appeals from agency decisions to impose sanctions, not merely to penalize those whose conduct may be deemed to warrant such a sanction, but to deter those who might be tempted to such conduct in the absence of such a deterrent. *See Reg'l Refuse Sys., Inc.*, 842 F.2d at 154. Nevertheless, a court must exercise caution in invoking its inherent power and comply with the mandates of due process. *See Chambers*, 501 U.S. at 50.

In all of her orders leading up to the recommended dismissal of the complaint, the ALJ admonished Powers for her failure to respond to Pinnacle's discovery requests, noted the contemptuous nature and tone of her pleadings, and warned Powers about the insufficiency of the confusing group of papers and information that she had filed in response to the ALJ's order compelling Powers to produce documents relevant and specific to Pinnacle's requests. Therefore, the ALJ provided adequate notice to Powers that her failure to comply in the current matter would

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result in a sanction, including the possibility of dismissal. Notwithstanding these warnings and cautionary orders, Powers continued to file rambling responses and documents that were irrelevant and non-responsive to the issues Pinnacle was attempting to discern from the complaint. Powers blatantly disregarded the ALJ's orders that clearly defined what was expected prior to the hearing. Powers, as a pro se litigant, need not be accorded special consideration under the federal rules of procedure because she failed to adhere to "readily comprehended court deadlines" and clear directives for filing documents germane to the issues and to Pinnacle's narrow and focused requests. *See Jourdan v. Jabe*, 951 F.2d 108, 109-10 (6th Cir. 1991).

We conclude that the ALJ did not violate Powers's Seventh Amendment right by failing to hold a trial on this matter. The Seventh Amendment right to trial by jury does not apply in administrative proceedings where a jury trial "would be incompatible with the whole concept of administrative adjudication." *Curtis v. Loether*, 415 U.S. 189, 194 (1974) (citing *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 48 (1937)). Thus, Powers's Seventh Amendment claim is meritless. We need not consider Powers's claims that she has been denied her constitutional rights under the First, Fourth and Fourteenth Amendments, because Powers has provided only vague references to these constitutional amendments before the agency and before this court, without specifying how her rights were abridged. *See Thurman v. Yellow Freight Sys., Inc.*, 97 F.3d 833, 835 (6th Cir. 1996).

Lastly, we find that Powers has been a frequent litigant in this Court and has filed numerous appeals based on the same subject matter and procedure as several previous cases. Powers has filed at least twelve appeals in the last two years based upon the same theory of whistleblowing activity against Pinnacle and against the State of Tennessee, all of which have been dismissed on the merits or for lack of jurisdiction. We conclude, based on this history of litigation, that the abuse of the judicial process must end.

Therefore, we order Powers to show cause in writing not later than thirty days from the filing of this order, as to why her permission to appeal in forma pauperis should not be permanently revoked. *See Reneer v. Sewell*, 975 F.2d 258, 260-61 (6th Cir. 1992); *Maxberry v. SEC*, 879 F.2d

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222, 224 (1989). We also require Powers to show cause as to why an injunction should not issue barring her from filing any further appeal or petition in this Court without first obtaining leave to do so from a judge of this Court. *See Ortman v. Thomas*, 99 F.3d 807, 811 (6th Cir. 1996).

Accordingly, the motion for in forma pauperis status is granted for the limited purposed of deciding this petition for review, the petition for review is denied, and all pending motions are denied. Rule 34(j)(2)(C), Rules of the Sixth Circuit. Additionally, Powers is required to show cause within 30 days of the date of this order why her in forma pauperis status should not be permanently revoked and why she should not be required to obtain leave of this Court before proceeding with any future petition for review or appeal.

ENTERED BY ORDER OF THE COURT

A handwritten signature in black ink, appearing to read "Leonard Green", written in a cursive style.

Leonard Green  
Clerk