



In the Matter of:

**JAMES G. BLODGETT, JR.,
COMPLAINANT,**

v.

**TENNESSEE DEPARTMENT
OF ENVIRONMENT AND
CONSERVATION,**

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

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

For the Respondent:

Kim L. Kirk, Esq., *Department of Environmental and Conservation, Nashville, Tennessee*

R. Jan Jennings, Esq., Carrol D. Kilgore, Esq., *Branstetter, Kilgore, Stranch & Jennings, Nashville, Tennessee*

FINAL DECISION AND ORDER

BACKGROUND

This case arose when the Complainant, James G. Blodgett, Jr., filed a complaint alleging that his employer, the Respondent, Tennessee Department of Environment and Conservation (TDEC), terminated his employment in violation of the whistleblower protection provisions of the Clean Air Act, 42 U.S.C.A. § 7622 (West 1995); the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C.A. § 9610 (West 1995); the Federal Water Pollution Control Act, 33 U.S.C.A. § 1367 (West 2001); the Safe Drinking Water Act, 42 U.S.C.A. § 300(j)-9(i) (West 1991); the Solid Waste Disposal Act, 42 U.S.C.A. § 6971 (West 1995); and the Toxic Substances Control Act, 15 U.S.C.A. § 2622 (West 1998). A Department of Labor Administrative Law Judge issued a Decision and Order Granting Respondent's Motion for Summary Decision and Dismissing Complaint on January 28, 2003.

Blodgett filed a timely Petition for Review and Motion for Leave to File Motion for Summary Reversal in this case with the Administrative Review Board.¹ On February 4, 2003, the Board issued a Notice of Appeal and Order Establishing Briefing Schedule in this case permitting Blodgett to file an initial brief on or before March 5, 2003. On February 27, 2003, Blodgett filed a Motion for Immediate Remand and on April 8, 2003, he filed a copy of a brief previously filed in *Powers v. TDEC*, ARB No. 03-061, in support of the Motion for Immediate Remand. However, Blodgett failed to file a brief in support of his petition for review as ordered in the Board's February 4, 2003 order.

Consequently, on December 19, 2003, the Board ordered Blodgett to show cause why the Board should not dismiss his appeal for failure to file a brief in support of his petition for review as ordered. Blodgett has failed to respond as ordered.

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.

Blodgett has failed to file a response to the Board's Order to Show Cause why his case should not be dismissed for failure to prosecute. Furthermore, Blodgett's counsel was well aware of the consequences of the failure to respond to an Order to Show Cause. *Slavin v. Office of Administrative Law Judges*, ARB No. 03-077, ALJ No. 03-CAA-12 (ARB Aug. 22, 2003)(case brought by Blodgett's counsel dismissed for failure to prosecute when counsel failed to file an opening brief as provided in Board's briefing order and to respond to Board's Order to Show Cause).

While we recognize that Blodgett is not personally responsible for the failure of his attorney to timely file a brief and to respond to the Order to Show Cause:

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-

¹ The Secretary has delegated authority to the Administrative Review Board to issue final decisions in appeals under the whistleblower provisions of the federal environmental statutes at 29 C.F.R. § 24.1. Sec'y Ord. 1-2002, 67 Fed. Reg. 64272 (Oct. 17, 2002).

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)).²

Gass v. United States Dep’t of Energy, ARB No. 03-035, ALJ No. 02-CAA-2, slip op. at 7 (Jan. 14, 2004).

Accordingly, because Blodgett has failed to prosecute his case and has failed to respond to our Show Cause Order to explain his failure to file a brief pursuant to the Board’s Briefing Order, we **DISMISS** his complaint.³

SO ORDERED.

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

WAYNE C. BEYER
Administrative Appeals Judge

² 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.

³ Given our dismissal of Blodgett’s complaint because he failed to respond to our Show Cause Order to explain why he had failed to file a brief pursuant to our briefing order, Blodgett’s outstanding Motion for Immediate Remand is moot.