



In the Matter of:

JEROME REID,

COMPLAINANT,

v.

CONSTELLATION ENERGY GROUP, INC.,

RESPONDENT.

ARB CASE NO. 04-107

ALJ CASE NO. 04-ERA-8

DATE: December 17, 2004

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Jerome Reid, pro se, Syracuse, New York

For the Respondent:

*James Petro, Esq., Denise Galambos, Esq., Constellation Energy Group, Inc.,
Baltimore, Maryland*

FINAL DECISION AND ORDER

BACKGROUND

The Petitioner, Jerome Reid, filed a complaint against the Respondent, Constellation Energy Group, alleging that Constellation retaliated against him in violation of the whistleblower protection provisions of the Energy Reorganization Act (ERA).¹ On May 19, 2004, an Administrative Law Judge (ALJ) issued a Recommended Decision and Order Granting Respondent's Motion to Dismiss (R. D. & O.).

¹ 42 U.S.C.A. § 5851 (West 1995).

The Secretary of Labor has delegated to the Administrative Review Board her authority to issue final agency decisions under the ERA.² Reid filed a timely petition requesting the Board to review the ALJ's R. D. & O. On June 10, 2004, the Board issued a Notice of Appeal and Order Establishing Briefing Schedule. Pursuant to this Order, Reid's opening brief was due on July 8, 2004. Reid did not file a brief in accordance with the Order. Instead, he filed a motion requesting an additional thirty days to file his brief. The Board granted Reid's motion and ordered Reid to file an opening brief on or before August 9, 2004. Reid did not file a brief in compliance with the Order. Instead, on August 9 Reid filed a "Request for Documents" that included a request for "an extension in order to process and receive this information." Reid also requested that this case be consolidated with ALJ Case 2003-ERA-17. Furthermore, on August 19, 2004, Reid filed a "Request for Emergency Injunctive Relief" requesting the Board to return him to his original position at Nine Mile Point as a "Nuclear Auxiliary Operator with back pay Seniority 17 plus years" and all other benefits to which he is entitled, to review his settlement and the settlement of other employees with Constellation and Niagara Mohawk and to place a stay of action on the foreclosure of his home.

In an Order issued October 13, 2004, we denied Reid's request that "IBEW Local 97 be subpoenaed" for records,³ and his requests to consolidate this case with ARB No. 03-154, ALJ No. 2003-ERA-17⁴ and for injunctive relief.⁵

² Secretary's Order No. 1-2002, 67 Fed. Reg. 64,272 (Oct. 17, 2002); 29 C.F.R. § 24.8(a).

³ Under the ERA, an Administrative Law Judge conducts the initial administrative hearing proceedings and issues a recommended decision and order. 29 C.F.R. § 24.7. If a party timely seeks review of an ALJ's recommended decision, the Board, acting in an appellate capacity, reviews the record before the ALJ, the ALJ's recommended decision and the parties' briefs and issues a final decision. In effect, Reid sought to obtain new evidence to submit to the Board for its consideration. However, because the Board bases its decision on the evidence that the ALJ considered, the Board does not consider new evidence.

⁴ We found that consolidating this case with ARB No. 03-154, ALJ No. 2003-ERA-17 would not serve administrative convenience given the disparity in the issues presented and the stage of adjudication.

⁵ The Secretary of Labor established the ARB to issue final decisions for the Secretary in cases arising under a limited number of specified statutory provisions. Secretary's Order 1-2002, 67 Fed. Reg. 64272 (Oct. 17, 2002). The ARB's jurisdiction to act for the Secretary is limited by the terms of her delegation. Therefore, we denied Reid's request for emergency injunctive relief because, even if the Board considered the requested relief to be appropriate, the Secretary has not delegated authority to the Board to order the requested relief.

Because dismissal of an appeal for failure to prosecute is a very serious sanction, we gave Reid one more opportunity to file an opening brief in this case. We permitted Reid to file an opening brief on or before October 27, 2004. By order of October 13, 2004, we informed Reid that we would grant no further requests for an enlargement of time unless he demonstrated exceptional circumstances precluding the filing of the brief and that if he did not file his brief on time, his appeal could be dismissed without further order or opportunity to be heard. Reid acknowledged receipt of the Board's Order on October 16, 2004.

Reid did not file a brief on or before October 27, nor did he communicate with the Board in any manner regarding his failure to file a brief. Accordingly, the Board must decide whether to dismiss Reid's appeal because he has failed to file a brief in support of his petition for review.

DISCUSSION

Although offered ample opportunities to do so, Reid has failed to file an opening brief in support of his petition for review. Reid was clearly informed in the Board's October 13th Order granting a second enlargement of time that no further enlargements would be granted unless he established that there were exceptional circumstances that would support granting an additional enlargement of time. Nevertheless, Reid failed to file a brief as ordered and has offered no explanation for his failure to do so. While the Board does not hold pro se parties to the same standards of professional expertise as those represented by counsel, even pro se parties have an obligation to take the orders of the Board seriously and to comply with them.⁶ Furthermore, Reid was well aware of the consequences of the failure to file a brief in accordance with the Board's orders. In two previous cases, the Board has dismissed Reid's appeals because he failed to file a brief in accordance with the Board's Orders.⁷

As the Board previously held in dismissing an appeal by Reid for failure to prosecute:

[T]he Board has the inherent power to dismiss a case if a petitioning party fails to submit an opening brief as provided in the Board's briefing order. *Solnicka v. Washington Public Power Supply System*, ARB No. 00-

⁶ *Tucker v. Connecticut Winpump Co.*, ARB No. 02-005, ALJ No. 2001-STA-53, slip op. at 5 (Mar. 15, 2002).

⁷ *See Reid v. Niagara Mohawk Power Corp.*, ARB No. 03-039, ALJ No. 2002-ERA-03 (ARB Dec. 16, 2003); *Reid v. Niagara Mohawk Power Corp.*, ARB No. 01-083, ALJ No. 2001-ERA-26 (Dec. 10, 2001).

009, ALJ No. 99-ERA-19, slip op. at 3 (ARB Apr. 25, 2000). *Accord Link v. Wabash Railroad Co.*, 370 U.S. 626, 630 (1962)(recognizing that courts have the inherent power to dismiss a case for failure to prosecute). Like the courts, this Board must necessarily manage its docket in an effort to ‘achieve the orderly and expeditious disposition of cases.’ *Id.* at 631.⁸

Thus, given Reid’s failure to submit an opening brief as ordered, we find that Reid has failed to prosecute his case. Accordingly, we **DISMISS** Reid’s appeal.

SO ORDERED.

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

OLIVER M. TRANSUE
Administrative Appeals Judge

⁸ *Reid v. Niagara Mohawk Power Corp.*, ARB No. 01-083, slip op. at 2.