



In the Matter of:

GALE COOK,

ARB CASE NO. 00-057

COMPLAINANT,

ALJ CASE NO. 00-STA-17

v.

DATE: August 31, 2000

SHAFFER TRUCKING, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Gale Cook, *Pro se*, Tukwila, Washington

For the Respondent:

Richard A. Peterson, Esq., Lincoln, Nebraska

ORDER DENYING INTERLOCUTORY APPEAL

Respondent Shaffer Trucking, Inc. has filed an interlocutory appeal of an Administrative Law Judge's order regarding venue of the administrative hearing in this case arising under the Surface Transportation Assistance Act of 1982, as amended, 49 U.S.C.A. §31105 (1997).

Background

_____Administrative Law Judge (ALJ) Burch originally scheduled the administrative hearing in this case for April 4, 2000, in Seattle, Washington, where complainant Gale Cook resides. Shaffer Trucking filed a "Motion for Change of Venue" arguing that it is a Pennsylvania corporation, headquartered in New Kingstown, Pennsylvania, and has no facilities in Washington state. Shaffer Trucking further averred that "[w]ith the exception of Complainant, the individuals interviewed by the [Occupational Safety and Health Administration] investigator regarding the termination of Complainant's employment all reside in the vicinity of Harrisburg, Pennsylvania." Respondent's

Motion for Change of Venue at 1. The ALJ granted the Motion and issued an order providing that the hearing would be rescheduled and held in Harrisburg, Pennsylvania. The case was then transferred to ALJ Brown in the Office of Administrative Law Judges' Camden, New Jersey office.

Judge Brown scheduled the hearing for April 17th and 18th in Harrisburg. In an Order dated April 17, 2000, however, he continued the hearing "because of the inability of the Complainant to afford transportation to the hearing location." Order at 1. Judge Brown stated:

Before setting another date, the Respondent is notified that it has a choice of location for the rescheduled proceeding. It will be rescheduled in Harrisburg, Pennsylvania upon condition that Respondent pays the costs of transportation, lodging and a reasonable per diem, or, the matter will be set for Seattle, Washington where the travel will be minimal for the Complainant.

Id. The ALJ attached a copy of the ARB's recent decision in *Hasan v. Commonwealth Edison Co.*, ALJ No. 1999-ERA-17, ARB No. 99-097, Order Denying Interlocutory Appeal (Sept. 16, 1999), to his Order and indicated that the parties might find it "instructive."^{1/} *Id.*

Discussion

The ARB generally disfavors interlocutory appeals resulting in piecemeal litigation of cases. *Amato v. Assured Transportation and Delivery, Inc.*, ALJ Case No. 98-TSC-6, ARB Case No. 98-167, slip op. at 2 (Jan. 31, 2000); *Hasan v. Commonwealth Edison Co.*, *supra*, slip op. at 2; *Allen v. EG & G Defense Materials, Inc.*, ALJ Case No. 97-SWD-8 & 10, ARB Case No. 98-073, slip op. at 2 (Sept. 28, 1998). Shaffer urges the ARB to make an exception to its general rule in this case, arguing that "the extraordinary circumstances presented by this proceeding justifies [*sic*] the Board's immediate review" Respondent's Interlocutory Appeal of Order Regarding Venue at 3. Essentially, Shaffer argues that the ALJ has misinterpreted the applicable law and procedural requirements and that Shaffer should not be forced to choose between the ALJ's options for scheduling the hearing (either reimbursing Cook for his travel expenses to Harrisburg or attending a hearing in Seattle).

We are not persuaded that Shaffer's allegations constitute "extraordinary circumstances" sufficient to compel the ARB to consider Shaffer's interlocutory appeal.^{2/}

^{1/} In *Hasan v. Commonwealth Edison Co.*, *supra*, a case arising under the Energy Reorganization Act, as amended, 42 U.S.C. §5851 (1994), the complainant sought review of an ALJ's order rescheduling the administrative hearing. The ALJ ordered the hearing to be held in Chicago, Illinois, where most of the witnesses resided, rather than in Huntsville, Alabama, within 75 miles of the complainant's residence, upon the respondents' agreement to pay for the complainant to attend the hearing in Chicago.

^{2/} Shaffer alleges: (1) "It appears that Judge Brown may have assumed that Part 24 of Title 29 of the Code of Federal Regulation [*sic*] is applicable to the disposition" of this case, (2) if the allegation that Cook
(continued...)

As we found in *Hasan v. Commonwealth Edison Co.*, *supra*, slip op. at 2, “[t]he Board should be particularly chary of interfering with an ALJ’s control over the time, place, and course of a hearing, but rather should support the sound exercise of an ALJ’s broad discretion in this area.”

Conclusion

Accordingly, we **DENY** Shaffer’s Interlocutory Appeal of Order Regarding Venue and **REMAND** the case to the ALJ for further proceedings.

SO ORDERED.

PAUL GREENBERG

Member

CYNTHIA L. ATTWOOD

Member

²(...continued)

is unable to afford to attend the hearing in Harrisburg was made “in the course of Complainant’s *ex parte* communication with Judge Brown, Respondent is unaware of it and, of course was not able to challenge or rebut Complainant’s contention” and (3) “Judge Brown’s order also failed to explain why he did not apply the provisions of 29 C.F.R. §18.28 which requires requests for continuances to be filed within fourteen days prior to the hearing date except for good cause arising after the fourteen day deadline.” We note that Shaffer did not first raise these allegations with the ALJ in the form of a motion for reconsideration. Instead, it raised them for the first time on appeal to the ARB. Accordingly, there is no factual record by which to judge the validity of Shaffer’s allegations. Such a record would be especially crucial in considering Shaffer’s allegations of potentially detrimental *ex parte* communications and the ALJ’s alleged failure to comply with the regulations regarding continuances at 29 C.F.R. §18.28.