



In the Matter of:

DANIEL SOMERSON,

ARB CASE NO. 06-023

COMPLAINANT,

ALJ CASE NO. 2004-STA-12

DATE: November 30, 2006

v.

EAGLE EXPRESS LINES, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Daniel S. Somerson, *pro se*, Jacksonville, Florida

For the Respondent:

Thomas A. Appel, Esq., *Appel & Appel*, Lansing, Illinois

FINAL DECISION AND ORDER

Daniel S. Somerson complained that Eagle Express Lines, Inc. (Eagle) violated 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), and its implementing regulations, 29 C.F.R. Part 1978 (2006), when it discharged him in August 2003. On December 6, 2005, a Department of Labor (DOL) Administrative Law Judge (ALJ) recommended dismissal of Somerson's complaint based on his failure to participate at a pre-hearing conference, and refusal to prosecute the case in accordance with the ALJ's orders. Recommended Decision and Order Dismissing Case (R. D. & O.). We affirm.

BACKGROUND

On July 28, 2003, Somerson applied for a part time over the road driving position with Eagle, which was engaged in transporting United States Mail on the highways. Somerson contended that he was discharged for voicing concerns about the time for a run in relation to the federal regulation limiting the number of duty hours and Eagle's knowledge of his web site on trucker safety. Letter from Area Director, Occupational Safety & Health Administration (OSHA), to Somerson, November 13, 2003. However, Eagle claimed it refused Somerson employment because he lied on his application and he was verbally abusive to its director of safety and compliance. *Id.* OSHA denied Somerson's complaint, *id.*, and he then requested an evidentiary hearing before an ALJ.

Although counsel initially represented Somerson, the Office of Administrative Law Judges (OALJ) stayed Somerson's case while the OALJ sought to remove his counsel from representing any complainants before the Department of Labor's administrative law judges. *In the Matter of the Qualifications of Edward A. Slavin, Jr.*, ALJ No. 2004-MIS-2 and 2004-STA-12 (ALJ Mar. 31, 2004) (Order Denying Authority to Appear), *aff'd*, ARB No. 04-088 (Apr. 29, 2005). The assigned ALJ afforded Somerson time to obtain new counsel, and on August 23, 2005, he scheduled a pre-hearing teleconference for Tuesday, September 6, 2005, before which the parties were ordered to exchange exhibits and other pre-hearing submissions. R. D. & O. at 2.

Somerson knew about the conference call, and related pre-hearing obligations, but he refused to participate. The ALJ cancelled the evidentiary hearing, and issued an order for Somerson to show cause why his case should not be dismissed "for failure to participate in the scheduled pre-hearing conference, for failure to follow the order from the judge, and for failure to prosecute this case." R. D. & O. at 3. In response, Somerson claimed that a federal judge had ordered that he not set foot in a federal courtroom or use the mails; that he was unable to obtain counsel; and that the ALJ should rule on motions for summary judgment that his former counsel previously filed. R. D. & O. at 3-4.

The ALJ cited his authority to enter a default judgment against a party for failure to appear at a properly noticed hearing without good cause, 29 C.F.R. § 18.5(b) and § 18.39(b) (2006); to render a decision against a party who fails to comply with an order of an ALJ, 29 C.F.R. § 18.6(d)(2)(v); and to take actions necessary to conduct fair and impartial hearings, 29 C.F.R. § 18.29(a)(1-9). R. D. & O. at 4-5.

Applying those authorities to the case before him, the ALJ found that Somerson was aware of the pre-hearing conference, but chose not to participate, which the ALJ concluded "demonstrated[d] an egregious disregard for this judicial process and unacceptable disrespect for the other participants in this process." *Id.* at 5.

With regard to Somerson's contention that a federal judge had ordered him not to set foot in a federal courtroom or use the mails, the ALJ reviewed that court's order, which stemmed from Somerson's "inappropriate conduct during the course of a previous

lawsuit before the OALJ.” *Id.* at 5. The consent order required that Somerson “conduct himself *within the bounds of appropriate respect and decorum.*” *Id.* at 5. When Somerson was found in violation, the federal judge imposed the additional requirement that Somerson obtain leave of the court before filing any new claim in that federal district. *Id.* at 5-6. As Somerson had been instructed prior to the pre-hearing conference, the federal judge’s order did not restrict his participation or excuse his non-participation in Somerson’s STAA case before the ALJ. *Id.* at 2, 5-6.

Finally, with respect to Somerson’s claim that, rather than conduct an evidentiary hearing, the ALJ should rule on motions for summary judgment that his former counsel previously filed, the ALJ determined that his former counsel had filed no such motions. Although Somerson’s counsel had filed “numerous motions” during his participation in the case, none were for summary judgment (summary decision); and so Somerson’s request “cannot help him establish good cause why his case should not be dismissed for failure to participate in the scheduled pre-hearing conference, failure to follow [the ALJ’s order], and the failure to prosecute this case.” *Id.*

DISCUSSION

The case is now before the ARB under the automatic review provisions of 49 U.S.C.A. § 31105(b)(2)(C) and 29 C.F.R. § 1978.109(c)(1). We issued a Notice of Review and Briefing Schedule on December 14, 2005. Neither Somerson nor Eagle has elected to file a brief.

The Secretary of Labor has delegated her jurisdiction to decide this matter by authority of 49 U.S.C.A. § 31105(b)(2)(C) to the Board. *See* Secretary’s Order 1-2002, 67 Fed. Reg. 64,272 (Oct. 17, 2002). *See also* 29 C.F.R. § 1978.109(c).

When reviewing STAA cases, the ARB 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 Trans, 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). The Board reviews the ALJ’s legal conclusions de novo. *See Roadway Express, Inc. v. Dole*, 929 F.2d 1060, 1066 (5th Cir. 1991).

We have observed that “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.” *Larue v. Kllm Transport, Inc.*, ARB No. 02-024, ALJ No. 01-STA-54, slip op. at 2 (ARB July 22, 2003) (quotations and citations omitted). We have reviewed the record in this matter and conclude that the ALJ correctly applied the law to the facts. It is clear that, by failing and refusing to obey the ALJ’s orders, by not demonstrating good cause, and by failing to brief arguments before us, Somerson has abandoned his right to pursue his STAA claim.

Therefore, for the reasons stated in the R. D. & O., and summarized here, we **DISMISS** Somerson's complaint.

SO ORDERED.

WAYNE C. BEYER
Administrative Appeals Judge

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge