



In the Matter of:

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

ARB CASE NO. 03-138

ALJ CASE NO. 03-CAA-15

v.

DATE: June 9, 2004

**TENNESSEE DEPARTMENT
OF ENVIRONMENT AND
CONSERVATION,**

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

**ORDER DISMISSING MOTION FOR SUMMARY REVERSAL
AND MOTION FOR EXPEDITED DECISION**

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), engaged in “internal blacklisting” 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 Recommended Decision and Order of Dismissal on August 8, 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 August 28, 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 September 29, 2003. Furthermore the Order granted Blodgett's request for leave to file a motion for summary reversal but reminded Blodgett, that the party seeking summary reversal bears a heavy burden and that accordingly, "the briefing schedule shall not be held in abeyance pending the filing of any such motion." Nevertheless, Blodgett failed to file a brief in support of his petition for review as ordered in the Board's August 28, 2003 order.

On November 19, 2003, Blodgett informed the Board that he was attempting to obtain new counsel, but until such time as he did, he would be appearing pro se. There is no indication on the document that Blodgett served his counsel, Edward Slavin, with the notification that he intended to proceed pro se. He also asked for time to "make the changes to the timely filings of my former council [sic] on this matter."²

Because Blodgett failed to file an initial brief in accordance with the Board's August 28, 2003 Order Establishing Briefing Schedule, on December 19, 2003, the Board ordered Blodgett to show cause no later than January 6, 2004, why the Board should not dismiss his appeal. Blodgett failed to respond as ordered.³ Consequently, the Board on March 22, 2004, issued a Final Decision and Order dismissing Blodgett's complaint. On May 17, 2004, Blodgett filed a Renewed Motion for Summary Reversal and Motion for

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).

² On October 6, 2003, Blodgett's counsel filed a Motion for Summary Reversal and Motion for Expedited Decision. By Order dated October 14, 2003, the Board returned these Motions to counsel. Although the Board had repeatedly admonished the counsel that requests for the Board to take action must be in the form of a motion with an appropriate caption, including the Board's docket number, the motions did not include the Board's docket number. The timely filings to which Blodgett referred were the Motions for Summary Reversal and Expedited Decision. On December 3, 2003, Blodgett's former counsel, Slavin, filed Complainant's Renewed Motion for Summary Reversal and Motion for Expedited Decision. This document included the Board's docket number.

³ Slavin filed a Response to Order to Show Cause on January 5, 2004. Slavin stated that in his November 26, 2003 Motion for Summary Reversal, he had incorporated all his prior filings in ARB Case 03-043 and that no further briefing was needed unless TDEC or the Board identified particular issues. The Board dismissed Blodgett's complaint in ARB Case No. 03-043, in which he complained that TDEC had violated the whistleblower provisions of the environmental statutes at issue here when it terminated his employment because Blodgett failed to file a timely brief. *Blodgett v. Tennessee Dep't of Env't & Conservation*, ALJ No. 2003-CAA-7 (March 19, 2004).

Expedited Decision in light of the Supreme Court's decision in *Tennessee v. Lane*, 540 U.S. ____ (2004).

DISCUSSION

The Board dismissed Blodgett's complaint on March 22, 2004, "because Blodgett has failed to prosecute his case and had failed to respond to our Show Cause Order to explain his failure to file a brief pursuant to the Board's Briefing Order...." *Blodgett v. TDEC*, ARB No. 03-138, ALJ No. 03-CAA-15, slip op. at 2. The case was not dismissed on the merits of Blodgett's argument that the Eleventh Amendment did not preclude suit in this matter.

The Board has inherent authority to reconsider its decisions arising under the environmental statutes at issue here in appropriate circumstances. *Leveille v. New York Air Nat'l Guard*, ARB No. 98-079, ALJ Nos. 94-TSC-3, 4, slip op. at 2-3 (ARB May 16, 2000). In this case reconsideration would not interfere with, delay or otherwise affect the fulfillment of the Acts' safety purposes and goals. *Id.* Furthermore, the request was filed soon after the Board issued its decision.

Nevertheless, upon reconsideration, we must deny Blodgett's motion for summary reversal.

In Blodgett's Renewed Motion for Summary Reversal, he does not address or refute the Board's stated grounds for dismissal. Instead, he puts forward a new argument as to why the Eleventh Amendment does not bar the complaint. However, this new contention is irrelevant. It is clear that the Board's decision to dismiss the complaint was founded solely on Blodgett's failure to adhere to the Board's filing deadlines. Consequently, since Blodgett provides no reason why the Board should reconsider the grounds for dismissal it articulated in dismissing the Complaint originally, the Motion for Summary Reversal and Motion for Expedited Decision is **DENIED**.

There appears to be some question whether attorney Edward Slavin continues to represent the Complainant. The Complainant and Slavin are hereby notified that the Board will accept no more filings in this case from Slavin, unless the Complainant notifies the Board in writing that he wishes Slavin to continue to represent him.

SO ORDERED.

WAYNE C. BEYER
Administrative Appeals Judge

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge