



In the Matter of:

**ASSISTANT SECRETARY OF
LABOR FOR OCCUPATIONAL
SAFETY AND HEALTH,**

ARB CASE NO. 02-068

ALJ CASE NO. 2001-STA-0040

PROSECUTING PARTY¹

DATE: August 29, 2003

AND

LESTER REICHELDERFER,

COMPLAINANT,

v.

BRIDGE TRANSPORT, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

FINAL DECISION AND ORDER

Lester Reichelderfer filed a complaint alleging that the respondent, Bridge Transport, Inc. (Bridge), discharged him from employment for expressing safety complaints in violation of the employee protection provision of the Surface Transportation Assistance Act of 1982 (STAA), as amended and recodified, 49 U.S.C. § 31105. Upon investigation of the complaint by the Occupational Safety and Health Administration, the Secretary found and determined that Bridge had violated the STAA. Bridge was ordered to offer Complainant reinstatement, to make appropriate payment of back wages and compensatory damages, and to expunge from his personnel records any adverse reference to Complainant's discharge.

¹ On May 2, 2002, counsel for the Assistant Secretary for Occupational Safety and Health filed a letter in this matter with the Administrative Review Board. The letter noted the Assistant Secretary's agreement with the decision below. The Assistant Secretary further requested amendment of the case caption to reflect the Assistant Secretary's status as the prosecuting party.

Bridge objected to the investigation's findings and determination, and on May 9, 2001 requested a hearing before a Department of Labor Administrative Law Judge (ALJ). A conference call was subsequently conducted with the presiding ALJ, and the parties requested the appointment of a settlement judge. A settlement judge was appointed; however, prior to the appointment, Bridge released its attorney and could no longer be contacted by the ALJ, the settlement judge, or counsel for the Assistant Secretary. *See generally* Order to Show Cause at 1. On January 31, 2002, the ALJ issued an Order to Show Cause why Bridge's request for a hearing should not be deemed to have been abandoned, and why the Assistant Secretary's previous findings should not be affirmed. *Id.* at 2.

As of April 2, 2002, Bridge had filed no response (despite Bridge's agent having signed for receipt of the Order to Show Cause which was posted via certified mail). ALJ's Order Canceling Hearing Due to Abandonment and Order Affirming Secretary's Findings and Order (ALJ's Order) at 1. Based on Bridge's failure to participate in the settlement process and respond to contact efforts, and its failure to respond to the Show Cause Order, the ALJ concluded that Bridge had abandoned its request for a hearing. *Id.* Accordingly, the ALJ ordered Bridge to comply with the relief measures previously directed in the Secretary's findings. The Administrative Review Board (Board) affirms the ALJ's Order.

BACKGROUND

Pursuant to 29 C.F.R. § 1978.109(a), (b) (2002), the ALJ forwarded the case to the Board to issue a final decision and order based on the record and the ALJ's Order. We issued a Notice of Review and Briefing Schedule, informing the parties that they were permitted to file briefs with the Board in support of or in opposition to the ALJ's Order. None of the parties filed a brief. *See n.1 supra.*

STANDARD OF REVIEW

Under the STAA, the Board 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 Transp. 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). Substantial evidence is that which is "more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Clean Harbors Envtl. Servs. v. Herman*, 146 F.3d 12, 21 (1st Cir. 1998) (quoting *Richardson v. Perales*, 402 U.S. 389, 401 (1971)).

In reviewing the ALJ's conclusions of law, the Board, as the Secretary's designee, acts with "all the powers [the Secretary] would have in making an initial decision...." 5 U.S.C. § 557(b). *See also* 29 C.F.R. § 1978.109(c). Therefore, the Board reviews the

ALJ's conclusions of law *de novo*. *Roadway Express, Inc. v. Dole*, 929 F.2d 1060, 1066 (5th Cir. 1991).

DISCUSSION

The ALJ's Order dismissing the request for a hearing is well-grounded in Bridge's abandonment of that request, as evidenced by its unexplained failures to participate in the administrative hearing process and to respond to the ALJ's Show Cause Order.

Courts possess the "inherent power" to dismiss a case on their own initiative for lack of prosecution. *Link v. Wabash R. R. 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. Like the courts, 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. *Tucker v. Connecticut Winpump Co.*, ARB No. 02-005, ALJ No. 2001-STA-53, slip op. at 4 (ARB Mar. 15, 2002); *Curley v. Grand Rapids Iron & Metal Co.*, ARB No. 00-013, ALJ No. 99-STA-39, slip op. at 2 (ARB Feb. 9, 1999).

The ALJ's conclusion that Bridge abandoned its request for a hearing is supported by substantial evidence in the record and well-established legal precedent. The parties' mutual request (approved by the ALJ) for appointment of a settlement judge came to naught when Bridge dismissed its counsel prior to the settlement judge's appointment and did not respond to further contacts. Moreover, as previously noted, Bridge did not respond to the ALJ's Show Cause Order despite having received it.

On review, the Board issued a Notice of Review and Briefing Schedule giving Bridge an additional opportunity to explain why the ALJ's finding that it abandoned its case should be reversed. Further, Bridge did not respond to the Board's attempt to make contact by telephone. Accordingly, the Board **AFFIRMS** the ALJ's Order.

SO ORDERED.

JUDITH S. BOGGS
Administrative Appeals Judge

OLIVER M. TRANSUE
Administrative Appeals Judge