



In the Matter of:

TIMOTHY J. BERNA,

ARB CASE NO. 04-121

COMPLAINANT,

ALJ CASE NO. 03-STA-7

v.

DATE: October 27, 2004

USF DUGAN, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearance:

For the Respondent:

*M. Kathryn Webb, Esq., McDonald, Tinker, Skaer, Quinn & Herrington P.A.,
Wichita, Kansas*

FINAL DECISION AND DISMISSAL ORDER

This case arises under Section 405, the employee protection provision, of the Surface Transportation Assistance Act of 1982, 49 U.S.C.A. § 31105 (West 1997). On May 30, 2003, a Department of Labor Administrative Law Judge (ALJ) issued an Order to Show Cause as to why the complaint should not be dismissed on the ground of abandonment, because the Complainant had not responded to the Respondent's discovery requests. On June 6, 2003, the Complainant telephoned the ALJ's office and informed the ALJ's legal technician that he wished to withdraw his complaint. See 29 C.F.R. § 1978.111(c)(2004) (a complainant may file a written withdrawal with the ALJ at any time before the findings or order become final). Although requested to do so, the Complainant did not put his request in writing. On June 13, 2003, the ALJ issued an Order Canceling Hearing and Dismissing Claim on the basis of abandonment.

Pursuant to 29 C.F.R. § 1978.109(a), this decision and the record were to be forwarded immediately to the Administrative Review Board for automatic review and to issue a final decision. But the Board did not receive either the decision or the record until June 24, 2004.

Pursuant to 29 C.F.R. § 1978.109(c)(2), the parties had thirty days from the date of the ALJ's Recommended Order to file with the Board briefs in support of or in opposition to the Recommended Order. No briefs were filed. The Board issued a Notice of Review and Order to Show Cause on June 28, 2004, ordering any party who believed that the Board should not approve the ALJ's Recommended Order to show cause no later than July 19, 2004, why the Board should not approve the ALJ's Recommended Order. The Board requested that a party that decided not to file a response, to inform the Board by letter, telephone, or facsimile. On July 9, 2004, the Board received a letter from counsel for the Respondent seeking approval of the ALJ's Recommended Order. The Board has not received a response from the Complainant.

Pursuant to 29 C.F.R. § 1978.109(c)(1), the Board is required to issue a final decision and order based on the record and the decision and order of the ALJ. Accordingly, the Board has reviewed the record and the decision and Recommended Order of the ALJ and determined that the ALJ's Order Cancelling Hearing and Dismissing Claim should be approved and that the complaint should be and hereby is **DISMISSED**.

SO ORDERED.

WAYNE C. BEYER
Administrative Appeals Judge

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge