



In the Matter of:

ANN DORMAN,

ARB CASE NO. 08-011

COMPLAINANT,

ALJ CASE NO. 2007-STA-028

v.

DATE: February 19, 2009

CHINOOK CHARTER SERVICES,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

FINAL DECISION AND ORDER DISMISSING COMPLAINT

This case arises under the employee protection provision of the Surface Transportation Assistance Act (STAA).¹ On December 12, 2006, Ann Dorman filed a complaint with the Secretary of Labor alleging that her employer, Chinook Charter Services (Chinook), violated STAA, Section 31105, when it cancelled her health insurance in retaliation for engaging in protected activity under STAA. Section 31105 provides protection from discrimination to employees who report violations of commercial motor vehicle safety rules or who refuse to operate a vehicle when such operation would violate those rules.

After investigating Dorman's complaint, the Occupational Safety and Health Administration (OSHA) found that Chinook did not violate the STAA. Dorman objected to OSHA's findings and requested a hearing before a Department of Labor Administrative Law Judge (ALJ).

¹ 49 U.S.C.A. § 31105 (West 2007), and implementing regulations, 29 C.F.R. Part 1978 (2006). The STAA has been amended since Dorman filed her complaint. See Implementing Recommendations of the 9/11 Commission Act of 2007, P.L. 110-53, 121 Stat. 266 (Aug. 3, 2007). Even if the amendments were applicable to this complaint, they would not affect our decision.

On June 19, 2007, the ALJ assigned to the case issued an order requesting pre-hearing statements. When Dorman failed to file her pre-hearing statement, Chinook filed a motion to dismiss. In a follow-up phone conversation, the attorney for Dorman indicated that Dorman no longer wished to pursue the appeal and that Chinook's counsel had been informed of this. Dorman's attorney indicated Dorman would file a withdrawal of objections, but after being contacted twice, Dorman failed to file a written withdrawal. On October 17, 2007, the ALJ ruled that Dorman had abandoned her case and cancelled the hearing.

The Administrative Review Board "shall issue a final decision and order based on the record and the decision and order of the administrative law judge" in cases arising under Section 31105.² This case is before the Board pursuant to the automatic review provisions found at 29 C.F.R. § 1978.109(a).

On October 29, 2007, the Board issued a Notice of Review and Briefing Schedule, permitting the parties to submit briefs in support of or in opposition to the ALJ's order. Neither party filed a brief.

Courts possess the "inherent power" to dismiss a case on their own initiative for lack of prosecution.³ 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."⁴ 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.⁵

Dorman failed to file a pre-hearing statement and failed to respond to the motion to dismiss. After indicating intent to withdraw her objections to OSHA's findings, Dorman failed to file a written withdrawal. Based upon the record before us, we conclude that substantial evidence and well-established legal precedent support the ALJ's recommended decision to dismiss.⁶

² 29 C.F.R. § 1978.109(c); *Monroe v. Cumberland Transp. Corp.*, ARB No. 01-101, ALJ No. 2000-STA-050 (ARB Sept. 26, 2001).

³ *Link v. Wabash R. R. Co.*, 370 U.S. 626, 629-30 (1962).

⁴ *Id.* at 630-631.

⁵ *Kruml v. Patriot Express*, ARB No. 03-015, ALJ No. 2002-STA-007, slip op. at 4-5 (ARB Feb. 25, 2004); *Assistant Sec'y for OSH and Reichelderfer v. Bridge Transp., Inc.*, ARB No. 02-068, ALJ No. 2001-STA-040, slip op. at 3 (ARB Aug. 29, 2003).

⁶ *Rose v. ATC Vancom, Inc.*, ARB No. 05-091, ALJ No. 2005-STA-014 (ARB Aug. 31, 2006).

CONCLUSION

Accordingly, the Board **ACCEPTS** the ALJ's Recommended Order and **DISMISSES** Dorman's complaint.

SO ORDERED.

WAYNE C. BEYER
Chief Administrative Appeals Judge

OLIVER M. TRANSUE
Administrative Appeals Judge