



**In the Matter of:**

**VINA COLLEY,**

**COMPLAINANT,**

**v.**

**U. S. DEPARTMENT OF ENERGY,  
AND SCIENCE AND ENGINEERING  
ASSOCIATES, INC., A wholly owned  
Subsidiary of Apogen Technologies,**

**RESPONDENTS.**

**ARB CASE NOS. 04-089  
05-071<sup>1</sup>**

**ALJ CASE NOS. 2004-ERA-18  
2004-ERA-19**

**DATE: November 15, 2005**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearance:**

*For the Complainant:*

*Vina Colley, pro se, McDermott, Ohio*

**FINAL DECISION AND ORDER DISMISSING APPEALS**

On April 26, 2004, the Complainant, Vina Colley, filed an interlocutory appeal of the Chief Administrative Law Judge John M. Vittone's Order refusing to accept Edward A Slavin, Jr.'s entry of appearance in this case arising under the Energy Reorganization Act (ERA).<sup>2</sup> The Administrative Review Board docketed this appeal as ARB Case No. 04-089 (*Colley I*). In response to Colley's petition, the Board issued an Order to Show

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<sup>1</sup> The Administrative Review Board has consolidated these two appeals for purposes of disposition.

<sup>2</sup> 42 U.S.C.A. § 5851 (West 1995).

Cause requiring Colley to explain why her appeal was not moot since the Board had upheld Associate Chief Administrative Law Judge Thomas M. Burke's decision suspending Slavin's authority to appear in a representative capacity before the Office of Administrative Law Judges for at least five years from the date of the Associate Chief's decision.<sup>3</sup> Thus the issue before us in *Colley I* is whether Colley's interlocutory appeal is now moot because we have already determined that Associate Chief Burke properly refused to permit Slavin to appear before Department of Labor Administrative Law Judges. After considering Colley's response to our Show Cause Order and our established precedent,<sup>4</sup> we find that the *Colley I* appeal is moot.

On March 6, 2005, Colley filed a petition asking the Board to review the Recommended Decision and Order Dismissing Complaints that an Administrative Law Judge (ALJ) issued in the same case giving rise to *Colley I*. The Board docketed this case as ARB No. 05-071 (*Colley II*). Because Colley failed to timely file an opening brief in compliance with the Board's Notice of Appeal and Briefing Order, the Board ordered Colley to show cause why the Board should not dismiss her appeal. Accordingly, the issue before the Board is whether Colley has demonstrated good cause for her failure to timely file her opening brief. Upon consideration of Colley's response, we find that she has failed to address this issue and thus has failed to show good cause.

## BACKGROUND

### *Colley I*

On April 15, 2004, the Chief Administrative Law Judge issued an Order rejecting a notice of appearance filed on Colley's behalf by Edward A. Slavin, Jr.<sup>5</sup> In support of this Order, the Chief Judge wrote:

On March 31, 2004, Associate Chief Administrative Law Judge Thomas M. Burke issued an "Order Denying Authority to Appear" in which Mr. Slavin was disqualified from appearing in a representative capacity before OALJ, effective immediately. . . . Mr. Slavin was disqualified for conduct such as disobeying lawful orders and neglecting deadlines resulting in dismissal of his clients' cases on procedural grounds, incompetent representation, making false statements and misrepresentations to tribunals, vexatious and frivolous pursuit of non-meritorious claims or defenses, and improper and ex parte communications with judges. Thus, Mr. Slavin

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<sup>3</sup> *In re: Edward A. Slavin*, ARB No. 04-088, ALJ No. 2004-MIS-2. The Board has also suspended Slavin from practicing before it. *In re: Edward A. Slavin*, ARB No. 04-172 (Oct. 20, 2004).

<sup>4</sup> *Id.*

<sup>5</sup> Chief Administrative Law Judge's Order at 1.

will not be permitted to appear on behalf of Ms. Colley before this office.<sup>[6]</sup>

Colley filed a petition requesting the Board to review the Chief Judge's order. The Secretary of Labor has delegated her authority to issue final administrative decisions in cases arising under the ERA to the Board.<sup>7</sup> Because the ALJ has not issued his final recommended decision and order in this matter, Colley's request that the Board review the Chief Judge's Order is an interlocutory appeal. The Secretary's delegated authority to the Board includes, "discretionary authority to review interlocutory rulings in exceptional circumstances, provided such review is not prohibited by statute."<sup>8</sup>

On June 15, 2005, the Board issued an Order to Show Cause. The Board noted that on April 29, 2005, it had issued a Final Decision and Order upholding the decision of Associate Chief Administrative Law Judge Burke suspending Slavin's authority to appear in a representative capacity before the Office of Administrative Law Judges for at least five years. Thus, we ordered Colley to show cause why her appeal was not moot since, even if we accepted the appeal, recent Board precedent established that the ALJ properly refused to accept Slavin's entry of appearance.

On June 29, 2005, the Board issued an Order Granting Extension of Time in response to Colley's motion requesting an additional thirty days to respond to the Board's Order to Show Cause. On August 2, 2005, the Board issued another Order Granting Extension of Time in response to Colley's second request for an additional thirty days to file her response to the Board's Show Cause Order.

On September 1, 2005, Colley filed a third request for an additional thirty days to respond to the Board's Order to Show Cause. We granted Colley's request for an additional thirty days, but we cautioned her that barring exceptional circumstances we would grant no further enlargements of time to respond to the Board's Show Cause Order. We further noted that while the Board is sympathetic to Colley's attempts to find counsel, we would not consider her inability to do so to be an exceptional circumstance justifying further enlargements of time. We also observed that while Colley states that this is a "complex case," the only issue currently before the Board in *Colley I* is whether her interlocutory appeal of the ALJ's refusal to allow Slavin to represent her is moot given that we have affirmed Judge Burke's decision suspending Slavin from practice before the Office of Administrative Law Judges for five years. Finally we cautioned

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<sup>6</sup> *Id.*

<sup>7</sup> Secretary's Order 1-2002 (Delegation of Authority and Responsibility to the Administrative Review Board), 67 Fed. Reg. 64272 (Oct. 17, 2002). *See also* 29 C.F.R. § 24.8.

<sup>8</sup> *Id.* at 64273.

Colley that if she failed to timely file a response to the Board's Show Cause Order, the Board might dismiss her appeal without further order. Colley filed a consolidated response to the Board's Orders to Show Cause in *Colley I* and *Colley II* on September 30, 2005.

### ***Colley II***

On March 3, 2005, an ALJ issued a Recommended Decision and Order Dismissing Complaints (R. D. & O.) in this case. The ALJ recommended that the complaints be dismissed because he found that Colley had failed to cooperate with his efforts to schedule a hearing. Colley refused to agree to a trial date until such time as Slavin was permitted to represent her, and she requested a stay until such time as Slavin's various appeals are resolved. Colley filed a petition requesting the Board to review the ALJ's R. D. & O.

In response to the petition, the Board issued a Notice of Appeal and Order Establishing Briefing Schedule on March 17, 2005. Accordingly to the Board's Order, Colley was required to file an opening brief on or before April 18, 2005. Colley failed to file a brief in accordance with the Board's Order.

On June 15, 2005, the Board ordered Colley to show cause why the Board should not dismiss her appeal for failure to file an opening brief. On June 29, 2005, the Board issued an Order Granting Extension of Time in response to Colley's motion requesting an additional thirty days to respond to the Board's Order to Show Cause. On August 2, 2005, the Board issued another Order Granting Extension of Time in response to Colley's second request for an additional thirty days to file her response to the Board's Show Cause Order.

On September 1, 2005, Colley filed a third request for an additional thirty days to respond to the Board's Order to Show Cause. We granted Colley's request for an additional thirty days, but we cautioned her that barring exceptional circumstances we would grant no further enlargements of time to respond to the Board's Show Cause Order. We noted that while we are sympathetic to Colley's attempts to find counsel, we would not consider her inability to do so to be an exceptional circumstance justifying further enlargements of time. We also stated that while Colley contends that this is a "complex case," the only issue currently before the Board is whether the Board should excuse her failure to timely file her brief. We informed Colley that we would consider the merits of her case only if she files a timely response to the Show Cause Order and if the Board decides that she has justified her failure to timely file her brief. We cautioned Colley that if she failed to file a timely response to the Board's Show Cause Order, the Board might dismiss her appeal without further order. As indicated above, Colley filed a joint response to the *Colley I* and *Colley II* Show Cause Orders on September 30, 2005.

## DISCUSSION

In the Order granting Colley a third enlargement of time in *Colley I*, the Board informed her that the only issue presented by her interlocutory appeal was whether Board precedent had rendered moot her objection to the Chief Judge's refusal to permit Slavin to represent her. Likewise, in the Order granting Colley a third enlargement of time in *Colley II*, the Board specified that the merits of Colley's case were not and would not be before the Board until Colley demonstrated in her response to the Board's Show Cause Order that she had good cause for failing to respond to the Board's briefing order. Nevertheless, in her joint response, Colley failed to address the mootness of her objection to the Chief Judge's refusal to permit Slavin to represent her. Nor did she address, much less demonstrate good cause for, her failure to timely file her brief. Instead, even though the Board clearly advised her that it would not consider the merits of her appeal of the ALJ's R. D. & O. until such time, if any, that she demonstrated good cause for failing to timely file her brief, her response is limited to a rebuttal of the ALJ's R. D. & O.

The Board has recently affirmed the Associate Chief Administrative Law Judge's Order Denying Authority to Appear in which he suspended Slavin's right to practice before the Office of Administrative Law Judges.<sup>9</sup> Colley has failed to provide the Board with any basis for departing from its precedent in this case. Accordingly we **DISMISS** the *Colley I* interlocutory appeal as moot.

Furthermore, the Board's authority to effectively manage its affairs, including the authority to require compliance with Board briefing orders, is necessary to "achieve orderly and expeditious disposition of cases."<sup>10</sup> This Board has authority to issue sanctions, including dismissal, for a party's failure to comply with the Board's orders and briefing requirements.<sup>11</sup>

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<sup>9</sup> Furthermore, on October 20, 2004, this Board issued a Final Order Suspending Attorney from Practice before the Administrative Review Board. *In re: The Matter of the Qualifications of Edward A. Slavin, Jr.*, ARB No. 04-172. The Board took that action in response to the August 27, 2004 decision of the Supreme Court of Tennessee suspending Slavin from the practice of law for two years.<sup>9</sup> *Bd. of Prof. Resp. of the Sup. Ct. of Tenn. v. Slavin*, 145 S.W.3d 538 (Tenn. 2004). On November 3, 2005, the Supreme Court of Tennessee disbarred Slavin. *In re: Edward A. Slavin Jr.*, BPR 012341. Slavin has sixty days from the date the Board of Professional Responsibility entered the order to appeal.

<sup>10</sup> *Link v. Wabash*, 370 U.S. 626, 630-31 (1962).

<sup>11</sup> See *Mastrianna v. Northeast Utilities Corp.*, ARB No. 99-012, ALJ No. 98-ERA-33, (Sept. 13, 2000)(complaint dismissed because complainant failed to adequately explain his failure to comply with the Board's briefing schedule); *cf.* Fed. R. App. P. 31(c) (allowing dismissal as sanction for failure to file a conforming brief); Fed R. App. P. 41(b) (permitting courts to dismiss a complaint for failure to comply with court orders).

Considering that Colley is proceeding in this appeal without representation by counsel, this Board is willing to extend to her a degree of latitude in complying with the Board's procedural requirements.<sup>12</sup> This latitude, however, is not without bounds. Recognizing that dismissal of an appeal for failure to file a conforming brief is a very serious sanction and one not to be taken lightly, the Board gave Colley three enlargements of time to respond to the Show Cause Order and directed her quite specifically as to the issue she must address in responding to the Board's Order. But regardless of Colley's pro se status, we must remain impartial and we may not litigate her appeal for her.<sup>13</sup> Because Colley has failed to adequately respond to our Order to Show Cause by demonstrating good cause for her failure to timely file her opening brief, we **DISMISS** her *Colley II* appeal, as well.

**SO ORDERED.**

**OLIVER M. TRANSUE**  
**Administrative Appeals Judge**

**M. CYNTHIA DOUGLASS**  
**Chief Administrative Appeals Judge**

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<sup>12</sup> See *Young v. Schlumberger Oil Field Services*, ARB No. 00-075, ALJ No. 2000-STA-28, slip op. at 9 (ARB Feb. 28, 2003).

<sup>13</sup> *Accord Dozier v. Ford Motor Co.*, 702 F.2d 1189, 1194 (D.C. Cir. 1983) (“At least where a litigant is seeking a monetary award, we do not believe pro se status necessarily justifies special consideration. . . . While such a pro se litigant must of course be given fair and equal treatment, he cannot generally be permitted to shift the burden of litigating his case to the courts, nor to avoid the risks of failure that attend his decision to forgo expert assistance.”).