



Issue Date: 07 September 2007

Case No. 2007-STA-24

In The Matter Of:

Robert A. Anderson,
Complainant

v.

Grayhound Trash Removal, Inc./
E & J Environmental Company,
Respondents

**RECOMMENDED DECISION AND
ORDER DENYING CLAIM**

The hearing in this matter was originally scheduled for June 4, 2007, but was cancelled in my Order issued on June 1, 2007, pending resolution of motions filed by the Respondents. Specifically, on May 24, 2007, counsel for Respondents filed a Motion to Dismiss with Prejudice Based on Complainant's Failure to Appear for Deposition, or in the Alternative, to Compel Complainant's Appearance at Deposition. On May 25, 2007, counsel for Respondents filed a Motion to Dismiss with Prejudice Based on Complainant's Failure to Answer Interrogatories, Failure to Respond to Document Request and Failure to Serve a Prehearing Submission, or in the Alternative, Motion to Compel Complainant's Answers and Responses to Discovery Requests and Prehearing Submission and to Continue the Hearing. In my June 1, 2007 Order, I specifically directed the Complainant to file his response to these Motions by close of business on Monday, June 11, 2007. On June 10, 2007, the Complainant submitted his "Motion to Compel," requesting time to find an attorney. On July 10, 2007, Respondents submitted their reply and opposition to the Complainant's request. Respondents argued that the Complainant's filing did not address the merits of its two motions to dismiss, or in the alternative, to compel, but simply asked for time to find an attorney without offering any legitimate reason, or showing good cause as to why this matter should be dismissed.

On July 17, 2007, I issued an Order granting the Respondents' motion to compel discovery responses, directing the Complainant to respond to the Respondents' interrogatories and requests for production of documents no later than August 3, 2007. Additionally, the Complainant was ordered to appear for a deposition as scheduled by the Respondents, at a time and location convenient to both parties. The Complainant

was reminded that the sanctions for failure to cooperate in discovery include dismissal of his claim.

On August 3, 2007, the Complainant telefaxed a letter requesting an extension of time to find an attorney. He did not address his failure to respond to the Respondents' discovery requests. As there was no indication that this document was also telefaxed to the Respondents, I forwarded it to them. On August 6, 2007, the Respondents submitted a Motion to Dismiss for Failure to Comply with the Administrative Law Judge's Order, dated, July 18, 2007 and Opposition to Complainant's [Second] Request for Additional Time to Find an Attorney. Respondents argued that the Order was unambiguous in its direction that Complainant comply with discovery by August 3, 2007, as well as the sanctions for failure to comply. Yet the Complainant filed a request for an extension to find counsel at 4:27 pm on Friday, August 3, 2007. He offered no excuse for his failure to comply with the Order. Respondents also noted that the Claimant has had ample time to retain counsel in this proceeding, which he initiated about six months ago.

On August 21, 2007, I issued an Order denying the Complainant's request for additional time. I agreed with the Respondents that the Complainant had more than sufficient time to find counsel. I noted that his pleadings did not state what efforts he made to secure counsel, or the likelihood that he would be able to find counsel to represent him. Additionally, it had been approximately six months since the Complainant requested a hearing on his claim, which was ample time for him to find counsel if that were indeed a possibility. Moreover, the Complainant was specifically directed to comply with the Respondents' discovery requests in my July 17, 2007 Order. Yet he had made no attempt to respond to the Respondents' interrogatories and document requests, served on him in April 2007, and he had not yet appeared for deposition. Nor had he offered any reason for his failure to comply with my Order.

I noted that the Complainant was specifically directed to provide a response to the Respondents' discovery requests, but he had not made any attempt to do so. His request for an extension of time was denied, and I directed the Complainant, within ten days from the date of this Order, to show cause as to why his complaint should not be dismissed for his refusal to comply with the Court's order regarding discovery.

To date, the Complainant has not submitted a response to my Order to show cause.

Title 29 C.F.R. Section 18.6(d)(2) provides:

If a party or an officer or agent of a party fails to comply with a subpoena or with an order, including, but not limited to, an order for the taking of a deposition, the production of documents, or the answering of interrogatories, or requests for admissions, or any other order of the administrative law judge, the administrative law judge, for the purpose of permitting resolution of the relevant issues and disposition of the proceeding without unnecessary delay despite such failure,

may take such action in regard thereto as is just, including but not limited to the following:

(v) Rule that a pleading, or part of a pleading, or a motion or other submission by the non-complying party, concerning which the order or subpoena was issued, be stricken, or that a decision of the proceeding be rendered against the non-complying party, or both.

Accordingly, as provided by 29 C.F.R. Section 18.6(2)(v), based on the Complainant's failure to cooperate in discovery, and his failure to comply with my Order directing him to do so, his complaint for relief under the Surface Transportation Assistance Act is denied.

SO ORDERED.

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LINDA S. CHAPMAN
Administrative Law Judge

NOTICE OF REVIEW: The administrative law judge's Recommended Order of Dismissal, along with the Administrative File, will be automatically forwarded for review to the Administrative Review Board, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. See 29 C.F.R. § 1978.109(a); Secretary's Order 1-2002, ¶4.c.(35), 67 Fed. Reg. 64272 (2002).

Within thirty (30) days of the date of issuance of the administrative law judge's Recommended Order of Dismissal, the parties may file briefs with the Administrative Review Board (.Board.) in support of, or in opposition to, the administrative law judge's order unless the Board, upon notice to the parties, establishes a different briefing schedule. See 29 C.F.R. § 1978.109(c)(2). All further inquiries and correspondence in this matter should be directed to the Board.