



In the Matter of:

HERMAN SMITH,

COMPLAINANT,

v.

LYONDELL-CITGO REFINING LP,^{1/}

RESPONDENT.

ARB CASE NO.01-012

ALJ CASE NO. 00-CAA-8

DATE: June 27, 2001

BEFORE: THE ADMINISTRATIVE REVIEW BOARD^{2/}

Appearances:

For the Complainant:

Herman Smith, *Pro se, Missouri City, Texas*

For the Respondent:

Joseph G. Galagaza, Esq., *Seyfarth Shaw, Houston, Texas*

ORDER OF DISMISSAL

Complainant Herman Smith filed this case under the employee protection (“whistleblower”) provisions of the Clean Air Act, 42 U.S.C.A. §7622 (West 1994), contesting his August 16, 1999 discharge by Respondent LYONDELL-CITGO Refining LP. Smith’s whistleblower complaint was investigated by the Department of Labor, which concluded that it was untimely filed. Smith requested a hearing before an Administrative Law Judge (“ALJ”), who also recommended that the complaint be dismissed on the grounds that it was untimely.

On October 23, 2000, Smith filed a petition for review with this Board. By Order dated October 26, 2000, the Board issued a briefing schedule and allowed Smith until November 27, 2000, to file an initial brief in support of his petition for review. However, Smith did not file a brief or move for an extension of the filing deadline.

^{1/} Incorrectly named “Lyondell-Citgo Refining Co., Ltd.” in the proceedings below.

^{2/} This appeal has been assigned to a panel of two Board members, as authorized by Secretary’s Order 2-96. 61 Fed. Reg. 19,978 §5 (May 3, 1996).

As we have noted previously,

Courts possess the “inherent power” to dismiss a case for lack of prosecution. *Link v. Wabash R.R.*, 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 630-31. *Accord Tri-Gem's Builders, Inc.*, ARB Case No. 99-117, Order of Dismissal (Feb. 25, 2000). Like courts, this Board necessarily must manage its docket in an effort to “achieve the orderly and expeditious disposition of cases.” Thus, given [Complainant's] unexplained failure to submit a brief, notwithstanding the Board's every effort to allow him sufficient time to do so, we find that he has failed to prosecute his petition for review . . . [and dismiss it].

Mastrianna v. Northeast Utilities Corp., ARB No. 99-012, ALJ No. 98-ERA-33 (ARB Sept. 13, 2000). *Accord, Curley v. Grand Rapids Iron & Metal Co.*, ARB No. 00-013, ALJ No. 99-STA- 39 (ARB Feb. 9, 1999).

Although parties appearing *pro se* appropriately may be allowed some leeway, they must nonetheless take appropriate steps to litigate their case. In this case, Smith has requested review by this Board, but has failed to submit any materials explaining why the ALJ’s recommended decision was incorrect. The petition for review therefore is dismissed for failure to prosecute and the recommended decision of the ALJ is the final decision of the Secretary pursuant to 29 C.F.R. §24.7(d).

SO ORDERED.

PAUL GREENBERG
Chair

RICHARD A. BEVERLY
Alternate Member