

U.S. Department of Labor

Administrative Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001



In the Matter of:

KENNETH MCDOWELL,

ARB CASE NO. 2022-0046

COMPLAINANT,

ALJ CASE NO. 2020-STA-00054

v.

DATE: October 20, 2022

EAGLE INTERMODAL, INC.,

RESPONDENT.

Appearances:

For the Complainant:

Kenneth McDowell; *pro se*; Matteson, Illinois

For the Respondent:

**Sean Fagan; *Director of Safety, M&J Eagle Intermodal Logistics;*
Chicago, Illinois**

Before GODEK and PUST, Administrative Appeals Judges

DECISION AND ORDER DISMISSING PETITION FOR REVIEW

PER CURIAM:

This case arises under the Surface Transportation Assistance Act of 1982 (“STAA”), as amended.¹ Kenneth McDowell (Complainant) filed a whistleblower complaint against Eagle Intermodal, Inc. (Respondent) for alleged retaliation. On May 26, 2022, a United States Department of Labor Administrative Law Judge

¹ 49 U.S.C. § 31105(a); *see also* 29 C.F.R. Part 1978 (2020) (the STAA’s implementing regulations).

(ALJ) issued a Decision and Order (D. & O.) dismissing the complaint based on her finding that Complainant did not engage in protected activity.²

On June 7, 2022, Complainant appealed the ALJ's decision to the Administrative Review Board (Board).³ On June 16, 2022, the Board issued the Notice of Appeal and Order Establishing Briefing Schedule (Briefing Order). The Briefing Order required Complainant to file an opening brief by July 13, 2022. Complainant did not submit an opening brief as ordered.

Consequently, on September 14, 2022, the Board issued an Order to Show Cause ordering Complainant to explain why the Board should not dismiss his appeal for failing to timely file his opening brief.⁴ The Board cautioned Complainant that if the Board did not receive his response and opening brief on or before September 28, 2022, the Board may dismiss the appeal without further notice.⁵ Nevertheless, Complainant did not file a response or an opening brief as ordered.

The Board has the inherent power to dismiss a case for failure to prosecute in an effort to control its docket and to promote the efficient disposition of its cases.⁶ Pursuant to this authority, the Board may dismiss a complaint in a case in which the complainant failed to adequately explain his failure to comply with the Board's briefing schedule.⁷

Complainant failed to file an opening brief as ordered by the Board. The Board then gave Complainant the opportunity to explain why he had failed to file his opening brief, and explicitly warned him that failure to do so could result in

² D. & O. at 28.

³ Complainant's Petition for Review.

⁴ Order to Show Cause.

⁵ *Id.*

⁶ *Lewman v. Ken Brick Masonry Supply*, ARB No. 2007-0015, ALJ No. 2006-STA-00018 (ARB Oct. 31, 2007) (citing *Link v. Wabash R. R. Co.*, 370 U.S. 626, 630-31 (1962)).

⁷ *Boch v. J.P. Morgan Sec.*, ARB No. 2022-0029, ALJ Nos. 2020-CFP-00002, 2020-SOX-00004 (ARB June 15, 2022) (Dismissing the appeal where Complainant failed to respond to, and comply with, the Board's orders).

dismissal of his appeal. Again, Complainant did not file a response. Given Complainant's failure to respond to, and comply with, the Board's orders, we **DISMISS** Complainant's appeal.⁸

SO ORDERED.



STEPHEN M. GODEK
Administrative Appeals Judge



TAMMY L. PUST
Administrative Appeals Judge

⁸ In any appeal of this Decision and Order that may be filed, we note that the appropriately named party is the Secretary, Department of Labor, not the Administrative Review Board.