

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. 2025-0007

COMPLAINANT,

ALJ CASE NO. 2019-STA-00018

v.

**ASSOCIATE CHIEF ALJ
CARRIE BLAND**

J.B. HUNT TRANSPORT, INC.,

DATE: February 11, 2025

RESPONDENT.

**Before WARREN, Acting Chief Administrative Appeals Judge, and ROLFE,
Administrative Appeals Judge**

DECISION AND ORDER DISMISSING PETITION FOR REVIEW

PER CURIAM:

This case arises under the Surface Transportation Assistance Act of 1982 (STAA), as amended, and its implementing regulations.¹ On October 24, 2024, Complainant Kenneth McDowell filed a Petition for Review with the Administrative Review Board (Board) of Associate Chief Administrative Law Judge Carrie Bland's Order Granting Respondent's Motion for Summary Decision Order Dismissing Case, issued on September 25, 2024.

The Board issued a Notice of Appeal Acceptance, Electronic Filing Requirements, and Briefing Order on November 12, 2024. The Briefing Order required Complainant to file an opening brief by December 10, 2024 (28 calendar days from the Board's Briefing Order). In the Briefing Order, the Board notified

¹ 49 U.S.C. § 31105(a); 29 C.F.R. Part 1978 (2024).

Complainant that “a document is considered filed when received by the Clerk of the Appellate Boards.”² Complainant did not file an opening brief as ordered.

Consequently, on January 8, 2025, the Board issued an Order to Show Cause requiring Complainant to show cause why the Board should not dismiss his appeal due to his failure to file an opening brief. The Board ordered Complainant to file his response to the Order to Show Cause, as well as a copy of his opening brief, by January 22, 2025 (14 calendar days from the Board’s Order to Show Cause). The Board cautioned Complainant that “[i]f the Board does not receive Complainant’s response to this Order and Opening Brief within fourteen (14) calendar days of the issuance of this Order, the Board may dismiss the appeal without further notice to the parties.”³ The Board did not receive a response from Complainant until January 28, 2025, six days after the January 22, 2025 deadline.

On February 4, 2025, Respondent J.B. Hunt Transport, Inc. filed a Motion to Dismiss Appeal, requesting that the Board dismiss Complainant’s appeal because Complainant failed to file a timely opening brief and failed to show cause as to why he failed to file a timely opening brief.⁴ In addition to Respondent’s motion, 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.”⁵ Pursuant to this authority, the Board “may dismiss a complaint in a case in which the complainant failed to comply with the Board’s orders.”⁶

Complainant failed to file an opening brief as ordered by the Board. The Board then gave Complainant the opportunity to explain why he failed to file his opening brief, and explicitly warned him that failure to do so could result in dismissal of his appeal. The Board notified Complainant twice that a document is not filed until it is received by the Clerk’s office. Nevertheless, Complainant’s

² Briefing Order at 3 (citing 29 C.F.R. § 26.3(a)(4)). The Board further stated that, “[t]his means that unless otherwise set by law, under the Board’s regulations, a mailed document is not filed with the Board upon mailing or postmark date, but instead is filed upon receipt of the document by the Clerk’s office.” *Id.*

³ Order to Show Cause at 2.

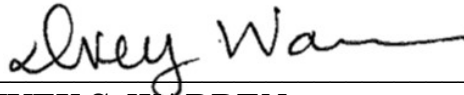
⁴ Respondent’s Motion to Dismiss Appeal at 5-6.

⁵ *Collins v. Next Marketing, Inc.*, ARB No. 2023-0057, ALJ No 2023-STA-00003, slip op. at 2 (ARB Oct. 24, 2023) (dismissing the appeal where Complainant failed to respond to, and comply with, the Board’s orders).

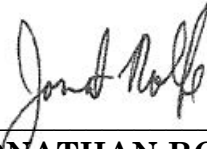
⁶ *Id.* (citations omitted).

response to the Order to Show Cause was not received by the Board until six days past the January 22, 2025 deadline. Moreover, even if the Board could excuse Complainant's late filing, Complainant has not offered any explanation as to why he failed to file a timely opening brief.⁷ Given Complainant's failure to comply with the Board's orders, we **DISMISS** Complainant's appeal.

SO ORDERED.



IVEY S. WARREN
Acting Chief Administrative Appeals Judge



JONATHAN ROLFE
Administrative Appeals Judge

⁷ See *Jeanty v. Lily Transp. Corp.*, ARB No. 2019-0005, ALJ No. 2018-STA-00013, slip op. at 12 (ARB May 13, 2020) (stating that although pro se litigants are afforded certain latitudes, they are “not excused from the rules of practice and procedure . . . merely because of [their] pro se status.”). We further note that in a recent case involving Complainant, *McDowell v. Eagle Intermodal, Inc.*, ARB No. 2022-0046, ALJ No. 2020-STA-00054, slip op. at 2 (ARB Oct. 20, 2022), the Board similarly dismissed the appeal for failure to follow the Board's briefing orders, and although the Board reinstated it on reconsideration, *McDowell v. Eagle Intermodal, Inc.*, ARB No. 2022-0046, ALJ No. 2020-STA-00054, slip op. at 3 (ARB Feb. 14, 2023), the Board again explicitly warned Complainant of the need to comply with its procedural orders or face dismissal of his appeal. Indeed, when Complainant again failed to file a brief as the Board ordered, the Board dismissed Complainant's appeal a second time. See *McDowell v. Eagle Intermodal, Inc.*, ARB No. 2022-0046, ALJ No. 2020-STA-00054, slip op. at 2 (ARB Mar. 27, 2023).