

U.S. Department of Labor

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



IN THE MATTER OF:

RAYMOND SIMMONS,

ARB CASE NO. 2025-0057

COMPLAINANT,

ALJ CASE NO. 2020-STA-00092

ALJ JASON A. GOLDEN

v.

DATE: July 13, 2026

**FOURTEENTH AVENUE
CARTAGE CO., INC.,**

RESPONDENT.

Appearances:

For the Complainant:

Raymond Simmons; *Pro Se*; Detroit, Michigan

For the Respondent:

Michael Wernette, Esq.; *Wernette Heilman*; Clarkston, Michigan

Before KAPLAN and BURRELL, Administrative Appeals Judges

ORDER OF DISMISSAL

This case arises under the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA), and its implementing regulations.¹ On May 7, 2025, Complainant Raymond Simmons filed a Petition for Review with the Administrative Review Board (Board) of an Administrative Law Judge's Decision and Order Denying Claim, issued on April 23, 2025. Complainant filed his Petition for Review with the Board electronically using the Board's electronic filing and service (EFS) system. In doing so, he registered with the Board using his personal email address and agreed to accept service of Board issuances via email through the EFS system.

¹ 49 U.S.C. § 31105(a); 29 C.F.R. Part 1978 (2026).

On May 12, 2025, the Board issued a Notice of Appeal Acceptance, Electronic Filing Requirements, and Briefing Order (Briefing Order). The Briefing Order ordered Complainant to file an Opening Brief on or before June 9, 2025 (28 days from the Briefing Order). The Board issued the Briefing Order through the EFS system, which should have automatically sent a copy of the Briefing Order to Complainant's registered email address.² Complainant did not file an Opening Brief.

On June 18, 2025, the Board issued an Order to Show Cause requiring Complainant to explain why the Board should not dismiss this appeal due to Complainant's failure to file an Opening Brief. The Board ordered Complainant to file a response to the Order to Show Cause, as well as a copy of his Opening Brief, by July 2, 2025 (14 days from the Order to Show Cause). The Board cautioned Complainant that if it did "not receive Complainant's response to this [Order to Show Cause] and Opening Brief within fourteen (14) calendar days of the issuance of this [Order to Show Cause], the Board may dismiss the appeal without further notice to the parties." Again, the Board issued the Order to Show Cause through the EFS system, which automatically sent a copy of the Order to Show Cause to Complainant's registered email address.³ Complainant did not file a response or an Opening Brief. Consequently, the Board dismissed Complainant's appeal on July 17, 2025.

Nearly a month later, on August 14, 2025, Complainant filed a "Motion to set aside decision and order dismissing Petition for Review" (Motion). Complainant stated that he did not receive the Briefing Order or Order to Show Cause and requested the opportunity to file an Opening Brief. Complainant did not file his Opening Brief with the Motion. Respondent did not file an opposition to the Motion.

We interpreted Complainant's Motion as a request for reconsideration and issued an Order Granting Reconsideration on September 16, 2025. We determined that the particular circumstances of the case justified granting reconsideration and reopening this appeal. As we explained in the Order Granting Reconsideration, EFS system records reflected that although Complainant was served with the Order to

² As explained below, the EFS system did not send the Briefing Order to the parties due to a technical error.

³ Unlike the Briefing Order, the EFS system sent the Order to Show Cause to the parties.

Show cause via email on June 18, 2025, the EFS system did not send the Briefing Order to Complainant due to a system error. Thus, while Complainant had notice of his obligation to respond as of June 18, 2025, Complainant did not receive the Briefing Order, which originally laid out the parties' briefing obligations and several other important pieces of information about this appeal.

In the Order Granting Reconsideration, we ordered Complainant to file an Opening Brief by October 24, 2025 (28 days from the Order Granting Reconsideration). We also warned Complainant that if we did not receive Complainant's Opening Brief as ordered, we may dismiss the appeal without further notice to the parties. EFS records confirm that the system sent the Order Granting Reconsideration electronically to Complainant's email address of record. The Board also sent an email to Complainant's email address of record with a courtesy copy of the Order Granting Reconsideration attached. Once again, though, Complainant did not file an Opening Brief and the Board has not heard from Complainant since we reopened his case.

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."⁴ 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."⁵ We previously warned Complainant that failing to file an Opening Brief as ordered could result in immediate dismissal of his appeal. Despite providing this warning, and despite Complainant asserting that he wished to file an Opening Brief, Complainant has not filed an Opening Brief, contacted the Board, or otherwise attempted to prosecute his appeal since it was reopened. Accordingly, we **DISMISS** Complainant's appeal.⁶

⁴ *Gonzales v. Global Crossing Airlines*, ARB No. 2025-0040, ALJ No. 2024-AIR-00029, slip op. at 2 (ARB May 16, 2025) (citation omitted) (dismissing appeal where complainant failed to file opening brief or respond to order to show cause).

⁵ *Id.* (citation omitted).

⁶ *See McDowell v. Eagle Intermodal, Inc.*, ARB No. 2022-0046, ALJ No. 2020-STA-00054, slip op. at 3-4 (ARB Mar. 27, 2023). As in this case, in *McDowell* the Board dismissed the appeal where the complainant failed to file an opening brief or respond to an order to show cause. *Id.* at 2. The complainant then moved for reconsideration, claiming, like Complainant here, that he did not receive the Board's orders. *Id.* at 2-3. The Board granted reconsideration and reopened the case. *Id.* at 3. Again, though, the complainant did not file an opening brief as ordered. *Id.* Consequently, the Board dismissed the appeal. *Id.* at 3-4.

SO ORDERED.

ELLIOT M. KAPLAN
Administrative Appeals Judge

THOMAS H. BURRELL
Administrative Appeals Judge