



BRB No. 18-0128

MARIA JORDAN)
)
 Claimant-Petitioner)
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 v.)
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 DYNCORP INTERNATIONAL, LLC)
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 Employer-Respondent)
)
 and)
)
 CONTINENTAL CASUALTY COMPANY)
)
 Carrier-Respondent)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS,)
 UNITED STATES DEPARTMENT)
 OF LABOR)
)
 Party-in-Interest)

DATE ISSUED: 10/19/2018

ORDER

By motion filed September 19, 2018, employer and carrier have renewed their joint motion to dismiss claimant’s appeal in this case because claimant has not filed a Petition for Review and brief in accordance with the Board’s prior orders dated April 25 and August 7, 2018. Claimant opposes the motion, stating she has not abandoned her appeal but is merely delaying filing her brief until she has received the withheld email she deems necessary in order to draft her Petition for Review and brief. For the reasons stated below, we grant employer and carrier’s motion to dismiss.

Since January 3, 2018, when the Board acknowledged claimant’s appeal of the administrative law judge’s decision denying benefits, the Board has issued the following Orders:

February 8, 2018: The Board denied claimant's motions for release of the Powers and Huber emails, stating it would not entertain further motions concerning the emails because that matter remained under the jurisdiction of the United States District Court for the District of Columbia. The Board also denied claimant's motion to dismiss her disability claim for lack of jurisdiction because the district director had not transferred the case to the Office of Administrative Law Judges; the Board stated it would not address claimant's contentions in a piecemeal fashion. The Board granted claimant's motion for an extension of time to file her Petition for Review and brief.

March 6, 2018: The Board denied claimant's motion for reconsideration of its denial of claimant's motion to release the emails, as well as her motions "to Remedy DI's First Ex Parte Communication" and to "Reverse Illegal Sanctions and Compel Production of Evidence." The Board granted employer's motion to declare claimant a vexatious litigant, reiterated that this appeal will not be conducted in a piecemeal manner, and instructed claimant "to file a *single* Petition for Review and brief that addresses the administrative law judge's interlocutory orders and final Decision and Order[.]" The Board warned claimant to desist from filing individual motions on the issues involved in the appeal.

April 25, 2018: The Board denied claimant's motion for en banc reconsideration of the order issued March 6, 2018, as well as her motion to disqualify the Board's panel members. The Board granted claimant a second extension of time, until May 7, 2018, within which to file a single Petition for Review and brief addressing the issues on appeal, stating that no further extensions would be granted.¹

August 7, 2018: The Board denied employer and carrier's motion to dismiss the appeal but ordered claimant to show cause why her appeal should not be dismissed for failure to file a Petition for Review and brief. The Board reminded claimant that she now possessed one of the emails in question and that it will not release the remaining email because it is the subject of pending litigation in the United States Court of Appeals for the District of Columbia. The Board informed claimant that compliance with the Show Cause Order requires her to file a single Petition for Review and brief addressing the issues on appeal. The Board again informed claimant there would be no further extensions, and it stated that failure to comply would result in the dismissal of her appeal, calling claimant's attention to the prior admonitions to desist from reiterating arguments about the emails and from filing motions in piecemeal fashion.

¹ In response, in a letter dated May 2, 2018, claimant informed the Board she would not be filing a Petition for Review and brief "until she has been afforded a reasonable opportunity to present the relevant facts to the Board."

Claimant filed a response to the Show Cause Order on August 18 and a supplemental response on August 30. In those pleadings, claimant listed various complaints against the Board and the administrative law judges and alleged 18 errors by the Board in issuing its orders. She also informed the Board that, on August 29, 2018, she filed another Freedom of Information Act (FOIA) lawsuit in district court in the Western District of Missouri. Neither response to the Board's Show Cause Order identifies any contentions of error with the administrative law judge's Decision and Order and, thus, neither response constitutes a Petition for Review and supporting brief in compliance with the Board's Orders.²

The Board's regulation states: "Within 30 days after the receipt of an acknowledgment of a notice of appeal issued pursuant to §802.210, the petitioner *shall submit* a petition for review to the Board which petition lists the specific issues to be considered on appeal." 20 C.F.R. §802.211(a) (emphasis added). Subsection (b) states that "[e]ach petition for review *shall* be accompanied by a supporting brief" which "[s]pecifically states the issues to be considered by the Board; . . . an argument with respect to each issue, . . . and any authorities upon which the petitioner relies to support the proposed result." 20 C.F.R. §802.211(b) (emphasis added). Subsection (d) provides that "[f]ailure to submit a petition for review and brief within the 30-day period *or to comply with any part of this section* may, in the discretion of the Board, cause the appeal to be deemed abandoned (see §802.402)." 20 C.F.R. §802.211(d) (emphasis added).

The Board has waived the time limitations and repeatedly granted claimant additional time to file her Petition for Review and brief, pursuant to Section 802.417, 20 C.F.R. §802.417, yet she has not done so, despite being continuously warned of dismissal.³ Where the appealing party is represented by counsel, as here, the Board will not proceed in the absence of the identification of the issues for review, the contentions of error, the supporting legal authority, and the results sought. *See, e.g., Nordahl v. Oceanic Butler, Inc.*, 20 BRBS 18 (1987), *aff'd*, 842 F.2d 773, 21 BRBS 33(CRT) (5th Cir. 1988) (issue not addressed due to inadequate briefing).

² Although claimant is in possession of the Huber email, she refuses to submit a Petition for Review and brief prior to obtaining the withheld Powers email, which remains the subject of federal court litigation. Because the substance of these emails was not in evidence before the administrative law judge, even if released, the emails cannot be considered by the Board. 20 C.F.R. §802.301(b). Thus, claimant's delay in filing her Petition for Review and brief is futile.

³ Claimant's Petition for Review and brief were due in February and it is now October.

The Board is required to process cases on appeal. 20 C.F.R. §802.302. With that duty comes the inherent power to manage its docket and to dismiss appeals when the petitioner repeatedly disregards orders. *Lewis v. Brown & Root, Inc.*, 711 F.2d 1287, 1291 (1983), *vacated on other grounds on recon.*, 722 F.2d 209 (5th Cir. 1984) (dismissal for want of prosecution justified because plaintiff's casual disregard of court's orders constituted "trifling with a busy court, burdened with a heavy docket of serious matters"); *see Link v. Wabash R. Co.*, 370 U.S. 626 (1962) (the authority of a federal trial court to dismiss a plaintiff's action with prejudice because of his failure to prosecute "cannot seriously be doubted");⁴ *see also National Hockey League v. Metropolitan Hockey Club, Inc.*, 427 U.S. 639 (1976) (no abuse of discretion in dismissing suit for plaintiff's failure to timely file answers to interrogatories); *Salinas v. Sun Oil Co.*, 819 F.2d 105, 106 (5th Cir. 1987) (dismissals with prejudice will be affirmed upon showing of "a clear record of delay or contumacious conduct by the plaintiff"); *Callip v. Harris Cty. Child Welfare Dep't*, 757 F.2d 1513 (5th Cir. 1985) (district court has discretion to dismiss a case for want of prosecution either with or without prejudice). The Board has given claimant ample opportunities to file a Petition for Review and brief in compliance with Section 802.211(a), (b), and repeatedly warned claimant of the consequences of her failure to do so, but she has deliberately failed to comply with the Board's orders and has not filed the required Petition for Review and brief. In addition, claimant's repeated filing of individual and repetitive motions has resulted in the waste of the Board's time and resources. Therefore, we grant employer and carrier's joint motion to dismiss this appeal. 20 C.F.R. §§802.211(d), 802.218, 802.401.

⁴ The Court also specified: "The authority of a court to dismiss sua sponte for lack of prosecution has generally been considered an 'inherent power,' 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." *Link*, 370 U.S. at 630-631.

Accordingly, the joint motion to dismiss is granted, and claimant's appeal, BRB No. 18-0128, is dismissed with prejudice.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge