



Issue Date: 25 March 2013

CASE NOs.: 2013-TSC-00001
2013-CAA-00003

In the Matter of:

MICHAEL J. MADRY,
Complainant,

vs.

EMLAB P&K LLC,
Respondent.

DECISION AND ORDER OF DISMISSAL
ON SUMMARY DECISION

On February 19, 2013, Respondent moved to dismiss. It asserted that it had not subjected Complainant to an adverse action, which is a required element of Complainant's claims. Respondent attached various exhibits to the motion. According to its proof of service, it served the motion by mail on February 15, 2013.

Complainant's opposition was due on or before March 4, 2013. When Complainant failed to file an opposition, on March 7, 2013, I issued an order that Complainant show cause why his complaint should not be dismissed. I notified Complainant that, in view of Respondent's attaching exhibits to its motion, I regarded it as for summary decision. *See* 29 C.F.R. § 18.40. I stated that the motion was case dispositive and that, if he failed to respond adequately, I might dismiss his complaint.

Complainant is represented by counsel. His response to the Order to Show Cause was due filed in this Office no later than March 22, 2013. He timely responded with a filing whose caption showed both of the above case numbers. Yet it expressly addressed only one of them: Case No. 2013-CAA-00003. As to that case, Complainant stated that he did not object to the dismissal. As to the other case number, Complainant was silent. He defaulted and failed to respond to the Order to Show Cause.

Complainant has had two opportunities to oppose Respondent's motion to dismiss (or for summary decision). He was warned that the motion was case dispositive and that a failure to

respond timely might lead to a dismissal. He is represented by counsel. I will therefore grant the motion with respect to both claims. Accordingly,

Respondent's motion to dismiss is GRANTED in its entirety. This matter is DISMISSED as to all claims and all parties.

SO ORDERED.

STEVEN B. BERLIN
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: This Decision and Order will become the final order of the Secretary of Labor unless a written petition for review is filed with the Administrative Review Board ("the Board") within 10 business days of the date of this decision. The petition for review must specifically identify the findings, conclusions or orders to which exception is taken. Any exception not specifically urged ordinarily will be deemed to have been waived by the parties. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing. If the petition is filed in person, by hand-delivery or other means, the petition is considered filed upon receipt.

The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Ave., NW, Washington, DC 20210. In addition to filing your Petition for Review with the Board at the foregoing address, an electronic copy of the Petition may be filed by e-mail with the Board, to the attention of the Clerk of the Board, at the following e-mail address: ARB-Correspondence@dol.gov.

At the same time that you file your petition with the Board, you must serve a copy of the petition on (1) all parties, (2) the Chief Administrative Law Judge, U.S. Dept. of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8001, (3) the Assistant Secretary, Occupational Safety and Health Administration, and (4) the Associate Solicitor, Division of Fair Labor Standards. Addresses for the parties, the Assistant Secretary for OSHA, and the Associate Solicitor are found on the service sheet accompanying this Decision and Order.

You must file an original and four copies of the petition for review with the Board, together with one copy of this decision. In addition, within 30 calendar days of filing the petition for review you must file with the Board: (1) an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and (2) an appendix (one copy

only) consisting of relevant excerpts of the record of the proceedings from which the appeal is taken, upon which you rely in support of your petition for review.

Any response in opposition to a petition for review must be filed with the Board within 30 calendar days from the date of filing of the petitioning party's supporting legal brief of points and authorities. The response in opposition to the petition for review must include: (1) an original and four copies of the responding party's legal brief of points and authorities in opposition to the petition, not to exceed thirty double-spaced typed pages, and (2) an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which appeal has been taken, upon which the responding party relies, unless the responding party expressly stipulates in writing to the adequacy of the appendix submitted by the petitioning party.

Upon receipt of a legal brief filed in opposition to a petition for review, the petitioning party may file a reply brief (original and four copies), not to exceed ten double-spaced typed pages, within such time period as may be ordered by the Board.

If a timely petition for review is not filed, or the Board denies review, this Decision and Order will become the final order of the Secretary of Labor. *See* 29 C.F.R. §§ 24.109(e) and 24.110.