In the Matter of:

BRENDA MUGLESTON,

COMPLAINANT,

v.

EG&G DEFENSE MATERIALS, INC.,

RESPONDENT.

ARB CASE NO. 04-060

ALJ CASE NO. 02-SDW-4

DATE: June 30, 2004

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:
Mick G. Harrison, Esq., ***Bloomington, Indiana***

For the Respondent:
Lois A. Baar, Esq., ***Janove Baar Associates, Salt Lake City, Utah***

FINAL DECISION AND ORDER

BACKGROUND

On February 12, 2004, a Department of Labor Administrative Law Judge (ALJ) issued a Recommended Decision and Order (R. D. & O.) in this case arising under the whistleblower protection provisions of the Safe Drinking Water Act, 42 U.S.C.A. § 300j-9(i) (West 1991); the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C.A. § 9610 (West 1995); the Federal Water Pollution Control Act, 33 U.S.C.A. § 1367 (West 2001); the Solid Waste Disposal Act, 42 U.S.C.A. § 6971 (West 2003); and the Toxic Substances Control Act, 15 U.S.C.A. § 2622 (West 1998); and the implementing regulations thereunder at 29 C.F.R. Part 24. The ALJ, in his R. D. & O., concluded that Mugleston was not entitled to relief for her retaliation and hostile work environment claims. Subsequently, on February 24, 2004, Mugleston timely petitioned the Administrative Review Board (ARB) to review the ALJ's R. D. & O.

On February 26, 2004, the ARB issued a Notice of Appeal and Order Establishing Briefing Schedule requiring Mugleston to file her opening brief in support of her petition for review on or before March 26, 2004. Mugleston neither filed a brief nor requested an enlargement of time in response to the Board's order. On June 15, 2004, the ARB received Mugleston's Motion for Extension of Time to File Opening Brief. In this motion, Mugleston requested that the ARB grant an extension of time to file her opening brief due to an illness in her counsel's family and her counsel's busy litigation schedule.

DISCUSSION

Courts possess the "inherent power" to dismiss a case for lack of prosecution. *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630 (1962). In *Mastrianna v. Northeast Utilities Corp.*, ARB No. 99-012, ALJ No. 98-ERA-33 (ARB Sept. 13, 2000), the Board dismissed a complaint in a case in which the complainant failed to adequately explain his failure to comply with the Board's briefing schedule. The Board explained that it has the inherent power to dismiss a case for want of prosecution in an effort to control its docket and to promote the efficient disposition of its cases. Slip op. at 2.

In its Notice of Appeal and Order Establishing Briefing Schedule, the Board unambiguously ordered that the deadline for Mugleston to file an opening brief was March 26, 2004. Mugleston failed to file a brief in compliance with this order. Furthermore, Mugleston did not contact the Board in a timely manner to request additional time to file a brief. In fact, the Board did not receive Mugleston's Motion for Extension of Time to File Opening Brief until June 15, nearly three months after the opening brief was due. While the Board sympathizes with counsel's situation, asking for an extension of time almost three months after the initial brief was due is unacceptable. *Accord Melendez v. Exxon Chem. Americas*, ARB No. 03-153, ALJ No. 93-ERA-6 (ARB Mar. 30, 2004). Counsel had a month to communicate to the Board that an enlargement of time was needed. Counsel's failure to contact the Board evidences his lack of respect for the Board and its orders and is an abdication of his professional responsibilities to this Board and to his client. As the Eleventh Circuit Court of Appeals recently held:

> In the courts, there is room for only so much lenity. The district court must consider the equities not only to plaintiff and his counsel, but also to the opposing parties and counsel, as well as to the public, including those persons affected by the court's increasingly crowded docket. … Deadlines are not meant to be aspirational; counsel must not treat the goodwill of the court as a sign that, as long as counsel tries to act, he has carte blanche permission to perform when he desires. A district court must be able to exercise its managerial power to maintain control over its docket …. This power is necessary for the court to administer effective justice and prevent congestion.

Young v. City of Palm Bay, Fla., 358 F.3d 859, 864 (2004) (citations omitted).

While we recognize that Mugleston is not personally responsible for the failure of her attorney to timely file a brief, as the Board discussed in *Gass v. United States Dep't of Energy*, ARB No. 03-035, ALJ No. 02-CAA-2 (ARB Jan. 14, 2004):

> Ultimately, clients are accountable for the acts and omissions of their attorneys. *Pioneer Investment Services Co., v. Brunswick Associates Limited Partnership*, 507 U.S. 380, 396 (1993); *Malpass v. General Electric Co.*, Nos. 85-ERA-38, 39 (Sec'y Mar. 1, 1994). As the Supreme Court held in rejecting the argument that holding a client responsible for the errors of his attorney would be unjust:
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> > Petitioner voluntarily chose this attorney as his representative in the action, and he cannot now avoid the consequences of the acts or omissions of this freely selected agent. Any other notion would be wholly inconsistent with our system of representative litigation, in which each party is deemed bound by the acts of his lawyer-agent and is considered to have "notice of all facts, notice of which can be charged upon the attorney." *Link v. Wabash Railroad Company*, 370 U.S. 626, 633-634 (1962) (quoting *Smith v. Ayer*, 101 U.S. 320, 326 (1879)).[1]

Slip op. at 7

Accordingly, because Mugleston has failed to file her brief in compliance with the Board's Order, she has failed to prosecute her case and we **DISMISS** her complaint.

SO ORDERED.

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

WAYNE C. BEYER
Administrative Appeals Judge

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[1] The Court did note, however, "[I]f an attorney's conduct falls substantially below what is reasonable under the circumstances, the client's remedy is against the attorney in a suit for malpractice." 370 U.S. at 634 n.10.