

IN THE MATTER OF APPEALS UNDER PART IV OF O. REG 187/09 MADE UNDER THE
SAFETY AND CONSUMER STATUTES ADMINISTRATION ACT, 1996

BETWEEN:

GERALD HAUGHEY

Appellant

- and -

DIRECTOR OF LICENSING, ELECTRICAL SAFETY AUTHORITY

Respondent

DECISION AND ORDER ON ABANDONMENT OF APPEAL

1. By way of this decision, I hereby direct and order that this appeal be dismissed as abandoned, pursuant to section 11.3(4) of the *ESA Rules of Procedure for Reviews and Appeals* (“**ESA Rules**”).

Background

2. The underlying appeal in this matter was filed on June 24, 2024.
3. On November 13, 2024, a case conference was scheduled to be held by videoconference. Everyone who needed to be there attended — except the Appellant. In my Case Conference Report, I noted as follows:

The Appellant, Mr. Haughey, did not attend, despite being given notice of this case conference.

In particular, the ESA sent out a Notice of Case Conference by email back on October 18, 2024, alerting Mr. Haughey to the time and date of the conference. I was advised by Ms. Campbell that the ESA Review and Appeals office subsequently made multiple attempts to contact Mr. Haughey to advise him of this case conference, both by email and by phone (including attempting to reach Mr. Haughey by phone shortly after the scheduled start of the case conference). Counsel for the Respondent, Mr. Hurter, advised that he similarly contacted Mr. Haughey by email during the week prior to this case conference, asking Mr. Haughey to

confirm his attendance or advise if he required an adjournment. Mr. Hurter received no response.

In short, Mr. Haughey was given ample and repeated notice of this case conference and, without explanation, failed to attend. This is not acceptable. Mr. Haughey is warned further failures to attend case conferences or engage in the appeal process may result in his appeal being decided in his absence without further notice, or his appeal being dismissed as abandoned (pursuant to rules 2.2 or 11.3 of the *ESA Rules of Procedure for Reviews and Appeals*, respectively).

At the Respondent's request, however, I am prepared to adjourn this case conference and provide Mr. Haughey a further opportunity to participate.

I direct that the new case conference date be set within 15 days of the date of this report. The ESA Reviews and Appeals office shall make efforts to contact Mr. Haughey to set an agreed-upon time and date for the case conference. If Mr. Haughey fails to respond, then a new case conference date shall be set regardless and Mr. Haughey shall be given notice of same in the ordinary course. [Emphasis in original].

4. Thereafter, the ESA Review and Appeals Office and counsel to the Respondent attempted to reach Mr. Haughey in order to ensure his availability and ability to participate in a future case conference date, without success. The Respondent then suggested it may wish to proceed with an in-person case conference, rather than a virtual one.
5. On January 2, 2025, I sought the parties' input on whether they wished to have a case conference and, if so, how they wished for that case conference to proceed:

By way of direction made on November 13, 2024, this Panel adjourned a case conference that was supposed to be held on that date, but failed to proceed due to Mr. Haughey's unexplained absence. Since then, the Panel understands that repeated efforts have been made by the Respondent and the ESA's Review and Appeals office to contact the Appellant to ensure his ability to participate in a future case conference via Zoom, but the Appellant has failed to respond. In these circumstances, and given the Appellant's prior non-attendance at the November 2024 case conference despite repeatedly being provided with notice, the Panel has serious doubts as to whether proceeding with an in-person case conference would serve any useful purpose. If the Respondent is nevertheless requesting that an in-person case conference proceed, then it should make that request clear by 4:00 PM on January 7, 2025. Likewise, if the Appellant, Mr. Haughey, is seeking to have an in-person (or virtual) case conference

scheduled, he should make that request known by the same deadline. Submissions may be made in writing to Ms. Campbell of the ESA's Reviews and Appeals Office. Upon receipt of any responses, the Panel will make a direction as to next steps. [Emphasis in original].

6. Mr. Haughey did not respond. Counsel to the Respondent answered as follows:

I write to advise that subsequent to the last case conference, I have had limited success in reaching Mr. Haughey.

After the last case conference I was able to connect with Mr. Haughey. I attempted to set up a Zoom meeting with him, however Mr. Haughey has since become non-responsive to my communications. I have called Mr. Haughey, left him a voice message, and sent him various texts and emails to no avail.

The ESA is withdrawing its request for the second case conference, to take place in person. Instead, the ESA is amenable to the second case conference taking place on **January 16th at 10AM** to take place **virtually**. [Emphasis in original]

7. On January 8, 2025, I provided Mr. Haughey with the following direction, putting him on notice that his appeal was at risk of being dismissed as abandoned:

The Review Panel has received the ESA's submissions on the issue of a case conference, which refers to further non-responsiveness from Mr. Haughey. Mr. Haughey himself did not provide any submissions by the deadline. In the circumstances, and given the history of Mr. Haughey's non-participation in this matter, the Review Panel is considering whether to dismiss Mr. Haughey's appeal as abandoned, pursuant to sections 11.3(4) and 13.5 of the ESA's Rules of Practice and Procedure. Before making a final decision, the Review Panel will provide Mr. Haughey with an opportunity to make submissions as to whether his appeal should be dismissed as abandoned. Any such submissions should be provided to Ms. Campbell of the ESA's Reviews and Appeals Office via email, by no later than 4:00 PM on January 17, 2025. The Review Panel is not requesting the ESA to provide any submissions at this time. Given this direction, the Review Panel will not be scheduling any further case conferences at this time. [Emphasis in original]

8. Mr. Haughey did not respond.

9. Finally, on January 28, 2025, counsel for the Respondent sent the following communication:

Further to the Tribunal's direction on January 8th, the Respondent respectfully requests that, pursuant to R.11.3(4) of the Rules of Procedures for Reviews and Appeals ("**Rules**"), that the Review Panel dismiss the matter in its entirety.

On November 13, 2024, a Case Conference took place at which the appellant, without notice, failed to attend – despite the Appellant being aware of the 1st Case Conference. In fairness to the Appellant a 2nd Case Conference was scheduled to take place on January 16, 2025. In an abundance of caution, and because at one point the Appellant indicated technological difficulties, the Respondents offered, and went so far as to request, that the 2nd Case Conference be held in person.

Despite repeated attempts to contact the Appellant via telephone at the number he provided in his 'Notice of Appeal to Review Panel, including having left voicemails and sent text messages, as well as by email, the Respondents have been unable to contact or otherwise reach the Appellant.

In turn, the 2nd Case Conference was cancelled by the Review Panel.

On January 8th the Review Panel wrote to the parties to advise that it was providing the Appellant an opportunity to provide reasons for why the Appellant's appeal should not be deemed abandoned. To the best of the Respondent's knowledge, the Appellant has made no such submissions.

The Respondent's respectfully request that pursuant to R.11.3(4) of the Rules, that the Appellant's appeal be deemed abandoned. The Appellant is no longer actively involved.

Analysis

10. Rule 2.1(3) of the *ESA Rules* requires parties to "communicate in a way that is timely and courteous, and respectful of everyone".
11. Rule 11.3(4) provides that the Review Panel "may dismiss a Case before a Hearing or without a Hearing, if it is a Case where the Review Panel has found a Party has abandoned their Case because the Party no longer wants to continue, is no longer actively involved, or is not complying with the Review Panel's Orders to enable the Case to go ahead."

12. Where dismissal is contemplated under rule 11.3(4), the party at risk of having their case dismissed must be given notice of the possible reasons for dismissal and a chance to make written arguments: rule 11.4.
13. As a Review Panel member assigned to the case conference in this matter (which never proceeded), the *ESA Rules* provide me with the authority to make “any other kind of Orders related to the Case”: rule 13.5. I am satisfied that includes an order dismissing an appeal as abandoned under rule 11.3(4).
14. I am equally satisfied that Mr. Haughey’s appeal should be dismissed, pursuant to that rule. As the chronology in this proceeding makes clear, the appellant has had multiple opportunities to demonstrate his intention to participate and continue on with his appeal — including in response to the notice he was provided about the risk of abandonment. Mr. Haughey has consistently failed to demonstrate any such intention.
15. In the circumstances, the record supports the conclusion that Mr. Haughey is “no longer actively involved” in this matter, to use the language of rule 11.3(4). Moreover, by failing to respond to communications from the ESA Reviews and Appeals office and the Respondent, he is effectively failing to comply with the Review Panel’s orders for a rescheduled case conference, which provides another independent basis for dismissing this appeal as abandoned.
16. The review and appeals process brings with it a duty to actively participate in good faith, and in line with directions from the Review Panel. That duty must be respected. Appellants cannot file an appeal, and then ignore the steps that follow at their leisure. Nor can they be incommunicative for prolonged stretches of time, as the ESA Reviews and Appeals office and other parties attempt to contact them.

Order

17. Accordingly, I direct and order that this appeal be dismissed as abandoned, without costs.



February 7, 2025

Daniel Pugen