



In the Matter of:

JOHN H. ATKINS,

ARB CASE NO. 00-047

COMPLAINANT,

ALJ CASE NO. 2000-STA-19

v.

DATE: December 11, 2001

THE SALVATION ARMY,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD^{1/}

Appearance:

For the Complainant:

John H. Atkins, *Pro se, Salem, Oregon*

**ORDER DENYING PETITION
FOR RECONSIDERATION**

This matter was initially before us based on Complainant John H. Atkins' allegation that Respondent Salvation Army harassed and constructively discharged him in violation of the whistleblower protection provisions of the Surface Transportation Assistance Act ("STAA"), as amended and recodified, 49 U.S.C.A. §31105 (West 1997). After reviewing the record, we determined that the Administrative Law Judge's decision to dismiss this case was supported by substantial evidence. *See* Final Decision and Order (Feb. 28, 2001). Atkins seeks reconsideration of that order based essentially on his belief that the ALJ drew the wrong conclusions from the evidence and testimony.

By regulation, our review of a STAA case is limited to a determination of whether the findings of the Administrative Law Judge ("ALJ") are supported by substantial evidence on the record considered as a whole. 29 C.F.R. §1978.109(c)(1). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a

^{1/} This matter has been assigned to a panel of two Board members, as authorized by Secretary's Order 2-96. 61 Fed. Reg. 19,978 §5 (May 3, 1996).

conclusion. *Consolidated Edison Co. of New York v. National Labor Relations Board*, 305 U.S. 197, 229 (1938). This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent a finding from being supported by substantial evidence. *National Labor Relations Board v. Nevada Consolidated Copper Corp.*, 316 U.S. 105, 106 (1942).

Here, as he did in his earlier brief before the Board, Atkins raises a number of widely-divergent objections to the ALJ's fact-finding in an apparent attempt to undermine the ALJ's decision. However, we made clear previously in our Final Decision and Order that Atkins cannot prevail unless he can first show that he was subjected to an adverse action, *i.e.*, that he was harassed or constructively discharged for engaging in protected activity. The ALJ found that Atkins was not subjected to an adverse action and we determined that there was substantial evidence in the record to support that finding. After reviewing the instant petition for reconsideration, our view that the ALJ's decision is supported by substantial evidence remains unchanged. Therefore, the petition for reconsideration is **DENIED**.

SO ORDERED.

PAUL GREENBERG
Chair

RICHARD A. BEVERLY
Alternate Member