



In the Matter of:

ROBERT WADE,

ARB CASE NO. 03-112

COMPLAINANT,

ALJ CASE NO. 03-STA-35¹

DATE: April 29, 2004

v.

SUMITEC, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Respondent:

John E. Dewane, Esq., *Butzbaugh & Dewane, P. L. C., St. Joseph, Michigan*

FINAL DECISION AND ORDER OF DISMISSAL

This case arises under the employee protection provisions of the Surface Transportation Assistance Act (STAA) of 1982, as amended, 49 U.S.C.A. § 31105 (West 1997) and implementing regulations at 29 C.F.R. Part 1978 (2003). In his Recommended Order of Dismissal, the ALJ determined that he had no jurisdiction over the case and dismissed it. We agree with the ALJ's recommendation and also dismiss this matter.

In November 2002, Robert Wade, a driver for Sumitec, filed a timely complaint of discrimination with the Department's Occupational Safety and Health Administration (OSHA). After investigating, OSHA found no merit to the complaint and issued a determination to that effect on May 14, 2003.

¹ In his Recommended Order, the ALJ incorrectly cited this case as 2003-STA-025. The correct number, 2003-STA-035, is set out on the ALJ website and is used in this decision.

On May 23, 2003, Sumitec filed “Objection to Findings” with the Office of the Administrative Law Judges. Sumitec objected to certain factual findings contained in the OSHA determination,² but it explicitly stated that it was neither requesting a hearing nor objecting to OSHA’s “no merit” finding. The applicable regulations state that, within 30 days of their receipt of the OSHA determination, either party may file objections to the findings. 29 C.F.R. § 1978.105(a). “Such objection shall also be considered a request for a hearing.” *Id.* Apparently through an administrative oversight, Sumitec’s objections were deemed to be a request for hearing notwithstanding the company’s explicit statement that it did not want a hearing.

When the parties were notified that an ALJ had been assigned to the case, Complainant Wade’s wife notified the ALJ’s office that Wade had not objected to OSHA’s no merit determination, had not requested a hearing, and had no desire to pursue his claim. After confirming this information via a letter to the parties, the ALJ issued the Recommended Order of Dismissal on June 23, 2003. He recommended dismissal because, as neither the Complainant nor the Respondent wanted a hearing, the ALJ had no jurisdiction to review the claim.

In accordance with the regulations, this matter was forwarded to the ARB for review and to issue a final decision and order. 29 C.F.R. § 1978.109. We have reviewed the recommended decision and concur with the ALJ’s determination that he had no jurisdiction to review the OSHA findings. Accordingly, the Board **AFFIRMS** the ALJ’s Order and **DISMISSES** the complaint.

SO ORDERED.

WAYNE C. BEYER
Administrative Appeals Judge

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

² Sumitec’s objections involved OSHA’s findings regarding Foreway Transportation, Inc., a company that supplied drivers and trucks to Sumitec.