



**In the Matter of:**

**TOM LEE BROOKS,**

**ARB CASE NO. 04-067**

**COMPLAINANT,**

**ALJ CASE NO. 2004-STA-00029**

**v.**

**DATE: November 30, 2004**

**A. J. SALMON TRUCKING, INC.,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

*For the Complainant:*

**Tom Lee Brooks, pro se, Belden, Mississippi**

*For the Respondents:*

**Anita Salmon, A.J. Salmon Trucking, Inc., New Albany, Mississippi**

### **FINAL DECISION AND ORDER**

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 (2004). The Complainant, Tom Lee Brooks, alleges that the Respondent, A. J. Salmon Trucking Inc. (Salmon Trucking), took adverse actions against him in violation of the STAA.<sup>1</sup> The Occupational Safety and Health Administration (OSHA) investigated Brooks' complaint and found it meritless. Brooks's appealed to an Administrative Law Judge (ALJ), who issued a Recommended Decision and Order dismissing the appeal as untimely. We affirm.

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<sup>1</sup> Brooks also alleged that Salmon Trucking discriminated against him on the basis of race. The Administrative Review Board does not have jurisdiction to consider race discrimination complaints and thus will not address Brooks' race discrimination allegations.

## BACKGROUND

Brooks alleges that Salmon Trucking retaliated against him for his protected activity in violation of the STAA. Specifically, Brooks claims that he refused Salmon Trucking's request that he falsify logbooks in violation of federal motor carrier safety regulations and the STAA and, as a result, suffered adverse actions by Salmon Trucking. Subsequently, he filed a timely complaint with OSHA. OSHA investigated the complaint and on August 27, 2003, found the complaint without merit and dismissed it. OSHA informed Brooks in its decision letter that he could appeal the decision by requesting, within 30 days, a hearing before the ALJ.

In a letter postmarked February 10, 2004, and received by the Office of the Administrative Law Judges on February 17, 2004, Brooks requested a hearing before an ALJ. The ALJ, noting that the request was filed almost six months after the OSHA decision letter, gave Brooks until February 27 to show cause why his appeal should not be dismissed as untimely.

Brooks responded to the request on March 4, 2004.<sup>2</sup> The ALJ determined that Brooks's response to the show cause order did not address the untimely filing issue. Instead, it restated his previous complaints. *See* R. D. & O. at 1. Consequently, on March 8, 2004, the ALJ recommended that Brooks's appeal be dismissed. *Id.* at 2.

## JURISDICTION AND STANDARD OF REVIEW

The Secretary of Labor has delegated to the Board the authority to issue final agency decisions under, *inter alia*, the STAA and the implementing regulations at 29 C.F.R. Part § 1978. Secretary's Order 1-2002, 67 Fed. Reg. 64,272 (Oct. 17, 2002). This case is before the Board pursuant to the automatic review provisions found at 29 C.F.R. § 1978.109(a).<sup>3</sup> Pursuant to 29 C.F.R. § 1978.109(c)(1), the Board is required to issue "a final decision and order based on the record and the decision and order of the administrative law judge."

When reviewing STAA cases, the Board is bound by the ALJ's factual findings if they are supported by substantial evidence on the record considered as a whole. 29 C.F.R. § 1978.109(c)(3); *BSP Trans, Inc. v. United States Dep't of Labor*, 160 F.3d 38, 46 (1st Cir. 1998); *Castle Coal & Oil Co., Inc. v. Reich*, 55 F.3d 41, 44 (2d Cir. 1995); *Lyninger v. Casazza Trucking Co.*, ARB No. 02-113, ALJ No. 01-STA-38, slip op. at 2 (ARB Feb. 19, 2004). Substantial evidence is that which is "more than a mere scintilla.

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<sup>2</sup> Brooks's response to the ALJ's show cause order was late, but the ALJ accepted it despite its tardiness.

<sup>3</sup> This regulation provides, "The [ALJ's] decision shall be forwarded immediately, together with the record, to the Secretary for review by the Secretary or his or her designee."

It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Clean Harbors Envtl. Services, Inc. v. Herman*, 146 F.3d 12, 21 (1st Cir. 1998) (quoting *Richardson v. Perales*, 402 U.S. 389, 401 (1971)); *McDede v. Old Dominion Freight Line, Inc.*, ARB No. 03-107, ALJ No. 03-STA-12, slip op. at 3 (ARB Feb. 27, 2004).

In reviewing the ALJ’s conclusions of law, the Board, as the Secretary’s designee, acts with “all the powers [the Secretary] would have in making the initial decision . . . .” 5 U.S.C.A. § 557(b) (West 1996). Therefore, the Board reviews the ALJ’s conclusions of law de novo. See *Yellow Freight Sys., Inc. v. Reich*, 8 F.3d 980, 986 (4th Cir. 1993); *Roadway Express, Inc. v. Dole*, 929 F.2d 1060, 1066 (5th Cir. 1991); *Monde v. Roadway Express, Inc.*, ARB No. 02-071, ALJ Nos. 01-STA-22, 01-STA-29, slip op. at 2 (ARB Oct. 31, 2003).

### DISCUSSION

We affirm the ALJ’s R. D. & O. dismissing Brooks’s complaint. Department of Labor regulations state that, once the complainant receives an agency’s findings or preliminary order, he has 30 days to file objections to them with the Chief Administrative Law Judge, U.S. Department of Labor, Washington, D.C. 29 C.F.R. § 1978.105(a). If he does not file objections within 30 days, the findings or preliminary order, “become final, and not subject to judicial review.” 29 C.F.R. § 1978.105(b)(2). Such filing limitations are only tolled when complainants show certain narrow and exceptional circumstances. See *Rockefeller v. Dep’t of Energy*, ARB No. 99-067, ALJ No. 99-CAA-1 (ARB Oct. 31, 2000).

By a letter dated August 27, 2003, OSHA informed Brooks of its findings and clearly stated his right to appeal to an ALJ within 30 days of receiving the letter. Brooks did not request a hearing with an ALJ until February 17, 2004, roughly 180 days after OSHA issued the letter. Because Brooks did not request a hearing until February 17, 2004, and offered no reason for his untimely request for a hearing, the Board affirms the ALJ decision to dismiss Brooks’s untimely appeal.

### CONCLUSION

Brooks requested a hearing almost 180 days after OSHA issued its determination letter and did not show cause why his request should not be denied as untimely. Therefore his request is **DENIED** and his complaint is **DISMISSED**.

**SO ORDERED.**

**M. CYNTHIA DOUGLASS**  
**Chief Administrative Appeals Judge**

**OLIVER TRANSUE**  
**Administrative Appeals Judge**