



**In the Matter of:**

**WILLIAM O. KIRKPATRICK,**

**ARB CASE NO. 06-070**

**COMPLAINANT,**

**ALJ CASE NO. 2001-STA-060**

**v.**

**DATE: October 31, 2006**

**ACTION STEEL SUPPLY, INC.,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**FINAL DECISION AND ORDER**

William O. Kirkpatrick complained that Action Steel Supply, Inc. (Action) violated the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA), as amended and recodified, 49 U.S.C.A. § 31105 (West 1997), and its implementing regulations, 29 C.F.R. Part 1978 (2006), when it discharged him on December 20, 2000. On March 8, 2006, a Department of Labor (DOL) Administrative Law Judge (ALJ) recommended dismissal of Kirkpatrick's complaint based on Action's discharge in bankruptcy. We affirm.

Kirkpatrick was a commercial motor vehicle driver for Action, an intrastate and interstate trucking company. On December 20, 2000, Kirkpatrick refused to deliver a load of steel. He said it was because he was unfamiliar with the vehicle and contended in a whistleblower complaint to the Occupational Safety and Health Administration (OSHA) that Action terminated him because he requested a road test and Certification of the Driver's Road Test. Secretary's Findings, July 31, 2001. Action claimed it fired Kirkpatrick for insubordination. OSHA denied Kirkpatrick's retaliation complaint on the ground that Action could accept Kirkpatrick's commercial driver's license in lieu of a road test. *Id.*

Kirkpatrick then requested a hearing before an ALJ. While the case was pending, Action filed for bankruptcy protection, and the ALJ ruled that the complaint was subject to the automatic stay provisions of the Bankruptcy Act, 11 U.S.C.A. § 362(a)(1) (West 2004 & Supp. 2006). Order, January 25, 2002. Kirkpatrick reached a settlement with the

Debtor's Official Unsecured Creditors' Committee, which allowed his claim in the amount of \$29,601. ALJ's Recommended Decision and Order Dismissing Complaint (R. D. & O.) at 2. However, as an unsecured creditor, Kirkpatrick received a court approved distribution of only \$571.00, which he accepted in full satisfaction of the claim.<sup>1</sup>

After Notice of Hearing, the Bankruptcy Court approved the Committee's amended Liquidation Plan. R. D. & O. at 2-3. Accordingly, the ALJ held that the Bankruptcy Court had discharged Kirkpatrick's STAA claim, and he recommended dismissal of his complaint. R. D. & O. at 3.

The case is now before the ARB under the automatic review provisions of 49 U.S.C.A. § 31105(b)(2)(C) and 29 C.F.R. § 1978.109(c)(1). We issued a Notice of Review and Briefing Schedule on March 15, 2006. Neither Kirkpatrick nor Action has elected to file a brief.

The Secretary of Labor has delegated her jurisdiction to decide this matter by authority of 49 U.S.C.A. § 31105(b)(2)(C) to the Board. *See* Secretary's Order 1-2002, 67 Fed. Reg. 64,272 (Oct. 17, 2002). *See also* 29 C.F.R. § 1978.109(c).

When reviewing STAA cases, the ARB is bound by the ALJ's factual findings if those findings 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). The Board reviews the ALJ's legal conclusions de novo. *See Roadway Express, Inc. v. Dole*, 929 F.2d 1060, 1066 (5th Cir. 1991).

We have reviewed the record and conclude that the ALJ correctly applied the law to the facts. Any liability Action had for Kirkpatrick's STAA complaint was discharged in the bankruptcy proceeding. Therefore, for the reasons stated in the R. D. & O., and summarized here, we **DISMISS** Kirkpatrick's complaint.

**SO ORDERED.**

**WAYNE C. BEYER**  
**Administrative Appeals Judge**

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

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<sup>1</sup> Kirkpatrick acknowledged receipt of "approximately" \$504.00. R. D. & O. at 2.