



**In the Matter of:**

**BRUCE A. MORGAN,**

**ARB CASE NO. 07-063**

**COMPLAINANT,**

**ALJ CASE NO. 2007-STA-010**

**v.**

**DATE: August 27, 2007**

**HENDRICKS CONSTRUCTION,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**FINAL DECISION AND ORDER GRANTING COMPLAINANT'S REQUEST TO  
WITHDRAW HIS OBJECTIONS TO OSHA'S FINDINGS**

This case arises under Section 405, the employee protection provision, of the Surface Transportation Assistance Act of 1982 (STAA).<sup>1</sup> The Complainant, Bruce A.

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<sup>1</sup> 49 U.S.C.A. § 31105 (Thompson/West 2007). Pursuant to the STAA's whistleblower provision, a person may not discharge an employee, or discipline or discriminate against an employee regarding pay, terms, or privileges of employment, because:

(A)(i) the employee, or another person at the employee's request, has filed a complaint or begun a proceeding related to a violation of a commercial motor vehicle safety or security regulation, standard, or order, or has testified or will testify in such a proceeding; or

(ii) the person perceives that the employee has filed or is about to file a complaint or has begun or is about to begin a proceeding related to a violation of a commercial motor vehicle safety or security regulation, standard, or order;

(B) the employee refuses to operate a vehicle because –

Morgan, filed a complaint with the United States Department of Labor's Occupational Safety and Health Administration (OSHA) alleging that his employer, the Respondent, Hendricks Construction, fired him in retaliation for his refusal to operate a commercial motor vehicle in violation of a Department of Transportation safety regulation. After an investigation, OSHA found that there was "no reasonable cause to believe that Respondent violated the Complainant's rights under STAA ...." Morgan objected to OSHA's finding and requested a hearing by a Department of Labor Administrative Law Judge.<sup>2</sup>

On February 21, 2007, the Administrative Law Judge (ALJ) to whom the case had been assigned issued a Notice of Hearing and Pre-hearing Order. The ALJ set the hearing for April 17, 2007, and ordered the parties to submit to him, as well as exchange with each other, various pre-hearing documents. The ALJ ordered that all discovery be concluded by March 20, 2007. The Respondent submitted its pre-hearing disclosures.

On March 7, 2007, Morgan filed a Request for Withdrawal with the ALJ. Morgan stated, "I am requesting to withdraw my complaint filed against Hendricks Construction at this time. I am now at a new job and do not want to interfere with it. I will not seek a complaint in the future." The Respondent filed a response with the ALJ and indicated that it did not object to Morgan's "request for dismissal with prejudice of his complaint."

The STAA's implementing regulation at 29 C.F.R. § 1978.111(c) provides:

At any time before the findings or order become final, a party may withdraw his objections to the findings or order by filing a written withdrawal with the administrative law judge or, if the case is on review, with the Administrative Review Board, United States Department of Labor. The judge or the Administrative Review Board, United States Department of Labor, as the case may be, shall affirm any

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- (i) the operation violates a regulation, standard, or order of the United States related to the commercial motor vehicle safety, health, or security; or
  - (ii) the employee has a reasonable apprehension of serious injury to the employee or the public because of the vehicle's hazardous safety or security condition.

49 U.S.C.A. § 31105 (A), (B).

<sup>2</sup> See 29 C.F.R. § 1978.105(a) (2006).

portion of the findings or preliminary order with respect to which the objection was withdrawn.<sup>3]</sup>

The ALJ issued his Recommended Order Approving Withdrawal of Objections and Dismissing Claim on March 26, 2007. The ALJ accepted Morgan's unopposed request for withdrawal. Consistent with 29 C.F.R. § 1978.111(c), the ALJ reinstated OSHA's findings and dismissed Morgan's complaint with prejudice. The ALJ also cancelled the hearing.

The case is now before the Administrative Review Board pursuant to the STAA's automatic review provisions.<sup>4</sup> The Secretary of Labor has delegated to the Board her authority to issue final agency decisions under the STAA.<sup>5</sup> When reviewing STAA cases, the ARB is bound by the ALJ's factual findings if those findings are supported by substantial evidence in the record considered as a whole.<sup>6</sup> In reviewing the ALJ's legal conclusions, the Board, as the Secretary's designee, acts with "all the powers [the Secretary] would have in making the initial decision . . . ."<sup>7</sup> Therefore, the Board reviews the ALJ's legal conclusions de novo.<sup>8</sup>

On April 23, 2007, the Board issued a Notice of Review and Briefing Schedule reminding the parties of their right to file briefs with the Board in support of or in opposition to the ALJ's recommended order within thirty days of the date on which the ALJ issued it.<sup>9</sup> Neither party submitted a brief.

The ALJ's recommended order complies with applicable STAA statutory and regulatory provisions. Consistent with 29 C.F.R. § 1978.111(c), the ALJ responded to Morgan's request to withdraw his complaint by reinstating OSHA's findings and dismissing Morgan's complaint. Morgan has not objected to the ALJ's recommended order.

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<sup>3</sup> 29 C.F.R. § 1978.111(c).

<sup>4</sup> See 49 U.S.C.A. § 31105(b)(2)(C); 29 C.F.R. § 1978.109(c)(1).

<sup>5</sup> Secretary's Order 1-2002, 67 Fed. Reg. 64,272 (Oct. 17, 2002); 29 C.F.R. § 1978.109(a).

<sup>6</sup> 29 C.F.R. § 1978.109(c)(3); *BSP Trans, Inc. v. U.S. 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).

<sup>7</sup> 5 U.S.C.A. § 557(b) (West 1996).

<sup>8</sup> See *Roadway Express, Inc. v. Dole*, 929 F.2d 1060, 1066 (5th Cir. 1991).

<sup>9</sup> See 29 C.F.R. § 1978.109(a).

Accordingly, we **GRANT** Morgan's request to withdraw his objection to OSHA's findings and **AFFIRM** those findings denying his complaint as provided in 29 C.F.R. § 1978.111(c).

**SO ORDERED.**

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

**DAVID G. DYE**  
**Administrative Appeals Judge**