



In the Matter of:

CHRISTOPHER BURLILE,

ARB CASE NO. 08-023

COMPLAINANT,

ALJ CASE NO. 2006-STA-006

v.

DATE: March 18, 2008

COBRA TRUCKING, JMK LINE,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

FINAL DECISION AND DISMISSAL ORDER

Christopher Burlile complained that Cobra Trucking, JMK Line, violated the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA), as amended and recodified,¹ and its implementing regulations,² when it discharged and discriminated against him. After an investigation, the Occupational Safety and Health Administration (OSHA) found that Burlile's complaint was meritless.³ Burlile objected to OSHA's findings and requested a hearing before a Department of Labor (DOL) Administrative Law Judge (ALJ).⁴

¹ 49 U.S.C.A. § 31105 (West 2008). Section 405 of the STAA provides protection from discrimination to employees who report violations of commercial motor vehicle safety rules or who refuse to operate a vehicle when such operation would violate those rules. Congress has amended the STAA since Burlile filed his complaint. *See* Implementing Recommendations of the 9/11 Commission Act of 2007, P.L. 110-53, 121 Stat. 266 (Aug. 3, 2007). We need not decide here whether the amendments would apply to this case, because even if the amendments applied, the amended provisions are not at issue in this case and thus the amendments would not affect our decision.

² 29 C.F.R. Part 1978 (2007).

³ *See* 29 C.F.R. § 1978.102.

⁴ *See* 29 C.F.R. § 1978.105.

The ALJ scheduled the case for hearing, but on March 21, 2006, Burlile's counsel filed a Suggestion of Bankruptcy, resulting in a stay of the proceedings. On September 10, 2007, the DOL ALJ issued an Order Directing Compliance with Stay Order directing the parties to report the status of the case and whether the stay had been lifted. Cobra's counsel replied on September 13th, providing the ALJ with a copy of a June 13, 2007 Final Decree issued by the United States Bankruptcy Court of the Southern District of Texas declaring that the estate of Cobra Trucking had "been fully administered." On November 5, 2007, Burlile responded, filing Complainant's Notice on Non-Suit which gave his "notice non-suit against Respondent . . . on all claims against defendant."

On November 29, 2007, the ALJ issued a Recommended Decision and Order Approving Withdrawal of Claim and Dismissing Case (R. D. & O.). The ALJ noted that pursuant to 29 C.F.R. § 1978.111(a), a "complainant may file a withdrawal of a complaint." R. D. & O. at 2. The ALJ also found that Burlile's Notice of Non-suit was "construed to be a request to withdraw the pending complaint." R. D. & O. at 2. Accordingly, the ALJ granted Burlile's request to withdraw his complaint.

The ALJ forwarded his recommended decision and the administrative record to the Administrative Review Board (ARB) and the case is now before us pursuant to the STAA's automatic review provisions.⁵ The Secretary of Labor has delegated to the Board her authority to issue final agency decisions under the STAA.⁶ 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.⁷ 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" ⁸ Therefore, the Board reviews the ALJ's legal conclusions de novo.⁹

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.¹⁰ Burlile

⁵ See 49 U.S.C.A. § 31105(b)(2)(C); 29 C.F.R. § 1978.109(c)(1).

⁶ Secretary's Order 1-2002 (Delegation of Authority and Responsibility to the Administrative Review Board), 67 Fed. Reg. 64,272 (Oct. 17, 2002); 29 C.F.R. § 1978.109(a).

⁷ 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).

⁸ 5 U.S.C.A. § 557(b) (West 1996).

⁹ See *Roadway Express, Inc. v. Dole*, 929 F.2d 1060, 1066 (5th Cir. 1991).

¹⁰ See 29 C.F.R. § 1978.109(a).

did not respond to the Board's notice. Cobra contacted the Board to indicate that it agreed with the terms of the R. D. & O.

However, the ALJ's recommended order does not comply with applicable STAA statutory and regulatory provisions. The ALJ relied on 29 C.F.R. § 1978.111(a), which only applies "at any time prior to the filing of the objections to the findings. . . ." Burlile filed his objections in a December 6, 2005 letter, signed by his attorney.

The STAA and its regulations do not specifically provide for withdrawal of a complaint once the case has been referred to an administrative law judge for hearing, but, the STAA's implementing regulations do provide:

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 portion of the findings or preliminary order with respect to which the objection was withdrawn.^[11]

Instead of dismissing the complaint, the ALJ should have, consistent with 29 C.F.R. § 1978.111(c), recommended that Burlile's claim be dismissed based on his withdrawal of his objections to OSHA's denial of his STAA complaint, and reinstated those findings denying his complaint.

Although the ALJ mistakenly construed Burlile's response to the Order Directing Compliance with Stay Order as a withdrawal of his complaint pursuant to 29 C.F.R. § 1978.111(a), the error is harmless since Cobra Trucking's estate was distributed through bankruptcy and under the STAA the ARB issues the final decision in this case. Burlile entered a notice of non-suit, which is "a plaintiff's voluntary dismissal of a case or of a defendant, without a decision on the merits."¹² Given the regulatory restraints of the STAA, we construe Burlile's non-suit to be a withdrawal of his objections to the Secretary's preliminary findings.

¹¹ 29 C.F.R. § 1978.111(c).

¹² **BLACK'S LAW DICTIONARY**, Westlaw "nonsuit" (8th Ed. 2004).

Accordingly, we **GRANT** the request to withdraw the objections to the Secretary's preliminary findings and **AFFIRM** those findings denying Burlile's complaint as provided in 29 C.F.R. § 1978.111(c).

SO ORDERED.

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

WAYNE C. BEYER
Administrative Appeals Judge