



In the Matter of:

ARMANDO PAVON,

ARB CASE NO. 04-127

COMPLAINANT,

ALJ CASE NO. 03-STA-46

v.

DATE: October 27, 2004

UNITED PARCEL SERVICE,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearance:

For the Respondent:

Joshua Ian Rosenstein, Esq., Gibson, Dunn & Crutcher, Washington, D.C.

FINAL DECISION AND DISMISSAL ORDER

This case arises under Section 405, the employee protection provision, of the Surface Transportation Assistance Act of 1982, 49 U.S.C.A. § 31105 (West 1997). On December 16, 2003, a Department of Labor Administrative Law Judge issued an Order of Dismissal. The Order was based on the Complainant's voluntary withdrawal of his objection to a finding of the Department of Labor's Occupational Safety and Health Administration that the Respondent did not discharge him in violation of the Act. See 29 C.F.R. § 1978.111(c) (2004) (a complainant may file a written withdrawal with the ALJ at any time before the findings or order become final). Pursuant to 29 C.F.R. § 1978.109(a), the ALJ's decision and the record were eventually forwarded to the Administrative Review Board for automatic review and to issue a final decision.

Pursuant to 29 C.F.R. § 1978.109(c)(2), the parties had thirty days from the date of the ALJ's Recommended Order to file with the Board briefs in support of or in opposition to the Recommended Order. No briefs were filed. The Board issued a Notice of Review and Order to Show Cause on July 7, 2004, ordering any party that believed the Board should not approve the ALJ's Recommended Order to show cause no later than July 27, 2004, why the Board should not approve the ALJ's Recommended Order. The

Board requested that a party that decided not to file a response, to inform the Board by letter, telephone, or facsimile. On July 9, 2004, counsel for the Respondent informed the Board in writing that the Respondent had no objection to the Recommended Order and would not file a brief before the Board. The Board has not received a response from the Complainant.

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 ALJ. Accordingly, the Board has reviewed the record and the ALJ's Recommended Order of Dismissal and determined that the recommended order should be approved and that the complaint should be and hereby is **DISMISSED**.

SO ORDERED.

WAYNE C. BEYER
Administrative Appeals Judge

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge