

**U.S. Department of Labor**

Office of Administrative Law Judges  
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**Issue Date: 17 December 2007**

Case No.: 2008-STA-00003

*In the matter of:*

STANLEY L. REED,

Complainant,

v.

CTJ ENTERPRISES,

Respondent.

**RECOMMENDED ORDER  
GRANTING COMPLAINANT'S REQUEST TO DISMISS**

This case is before the undersigned Administrative Law Judge pursuant to the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA), 49 USC § 31105, as amended. Federal Regulations set forth in 29 CFR Part 1978 and 20 CFR Part 18 apply to this case.

The original complaint was filed by Complainant on August 3, 2007. The Complainant's action was initially denied on October 2, 2007, and the Complainant filed an appeal to the Office of Administrative Law Judges on October 4, 2007. On December 4, 2007, a conference call was held with the Complainant (pro se) and Employer's counsel. This Administrative Law Judge advised the Complainant of his right to representation, conduct of a hearing, development of evidence, types of evidence that might be related to his complaint, right to present testimonial and documentary evidence for consideration, right to examine witnesses under oath, and right to submit a statement to be considered after the submission of all evidence by both sides. Complainant was also provided the names and contact telephone numbers for three State lawyer referral programs in his locality. The Complainant stated his desire to proceed without representation and his desire that the case should never have gone as far as it had.

During the conference call, Employer's counsel reported that he would obtain and have available for the formal hearing the July 30, 2007, accident report related to the cement truck #1205 roll-over onto the left side while driven by the Complainant, the post-accident vehicle inspection and maintenance reports, and the pre-accident vehicle inspection, maintenance and driver deficiency

reports for cement truck #1205. He also indicated that the company mechanic, two relevant plant managers/supervisors, operations manager, safety manager and salesman who drove the Complainant to the hospital, would be available for testimony through deposition or presence at the hearing. At the close of the conference call, the Complainant indicated that he had a related worker's compensation claim with the Employer that had been recently resolved and that it was his desire that the request for hearing be dismissed. This Administrative Law Judge discussed potential remedies in the case and advised the Complainant that he should discuss his request to withdraw from a formal hearing on his complaint with at least his worker's compensation attorney, think about the meaning and effect of having his complaint dismissed, and to submit his request in writing, should he still desire to request withdrawal of his request for hearing.

On December 7, 2007, the Complainant filed his had written request that "per our conversation during a conference call on 12/4/07 with CTJ Enterprises and ourselves, I have come to the conclusion to withdraw my request for a hearing on this case. Thank you for your time."

In view of all the foregoing, this Administrative Law Judge finds that the Complainant has made a voluntary, knowing, and intelligent waiver of his right to formal hearing. Accordingly, his request to withdraw his appeal for a formal hearing of the October 2, 2007, denial of his original complaint is granted; the request for hearing is dismissed pursuant to 29 CFR § 1978.111(c); and the Regional Supervisor, Occupational Safety and Health Administration, determination of October 2, 2007, is affirmed as the final determination of the Secretary.

### **RECOMMENDED ORDER**

It is hereby **ORDERED** that Complainant's cause of action is **DISMISSED** pursuant to **29 CFR §1978.11(c)** and the **Regional Supervisor, Occupational Safety and Health Administration, determination of October 2, 2007, is affirmed as the final determination of the Secretary and not subject to judicial review.**

A

ALAN L. BERGSTROM  
Administrative Law Judge

ALB/jcb  
Newport News, Virginia

**NOTICE OF REVIEW:** The administrative law judge's Recommended Order Approving Withdrawal of Objections and Dismissing Claim, along with the Administrative File, will be automatically forwarded for review to the Administrative Review Board, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. *See* 29 C.F.R. § 1978.109(a); Secretary's Order 1-2002, ¶4.c.(35), 67 Fed. Reg. 64272 (2002).

Within thirty (30) days of the date of issuance of the administrative law judge's Recommended Order Approving Withdrawal of Objections and Dismissing Claim, the parties may file briefs with the Administrative Review Board ("Board") in support of, or in opposition to, the administrative law judge's order unless the Board, upon notice to the parties, establishes a different briefing schedule. *See* 29 C.F.R. § 1978.109(c)(2). All further inquiries and correspondence in this matter should be directed to the Board.