



In the Matter of:

RAYMOND C. BELT,

ARB CASE NO. 06-069

COMPLAINANT,

ALJ CASE NO. 2002-STA-032

v.

DATE: January 31, 2008

**CONSOLIDATED FREIGHTWAYS
CORPORATION,**

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Respondent:

Joseph N. Gross, Benesch, Friedlander, Coplan & Aronoff, LLP, Cleveland, Ohio

FINAL DECISION AND ORDER

Raymond C. Belt complained that Consolidated Freightways Corporation violated the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA), as amended, 49 U.S.C.A. § 31105 (West 2007),¹ and its implementing regulations, 29 C.F.R. Part 1978 (2007), when it reprimanded him on February 7, 2002.

¹ “A person may not discharge an employee, or discipline or discriminate against an employee regarding pay, terms, or privileges of employment, because . . . 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 regulation, standard, or order, or has testified or will testify in such a proceeding” 49 U.S.C.A. § 31105(a)(1)(A).

We affirm the Administrative Law Judge's (ALJ) Recommended Decision and Order (R. D. & O.), issued on March 7, 2006, dismissing the complaint.

The record reveals that Belt filed a complaint with the Occupational Safety and Health Administration (OSHA) on February 28, 2002, alleging that he had received discipline for expressing concern due to a lack of a bill of lading when he went to pick up a load at Elmer's Glue Company. However, following an investigation, OSHA determined that Belt's complaint had no merit. It concluded that Consolidated Freightways reprimanded him because of his rudeness toward employees of its customer, Elmer's Glue. Letter from Karen Stone, Assistant Area Director to Raymond Belt, April 26, 2002.

Belt then appealed OSHA's ruling and requested a hearing before an ALJ. But the hearing never occurred, because Consolidated Freightways had filed a voluntary petition in bankruptcy. As more fully explained in the R. D. & O., the ALJ stayed proceedings before him pending a bankruptcy determination. R. D. & O. at 2. The bankruptcy court caused the assets of Consolidated Freightways to be placed in trust for certain creditors. Although Belt "clearly had notification of the pending bankruptcy matter . . . [and] filed claims through his Union relating to other pay related matters," the ALJ found that "he failed to file a claim in the bankruptcy proceeding which would have protected any financial interest which he maintained in this case." *Id.* at 3. Since Belt failed to file a claim with the bankruptcy court, the ALJ ruled that "the bankruptcy court's Plan of Liquidation discharged any liability of Consolidated Freightways Corporation toward Mr. Belt in this case." *Id.*

This case is before the Administrative Review Board pursuant to the automatic review provisions found at 29 C.F.R. § 1978.109(a). On March 15, 2006, we issued a Notice of Review and Briefing Schedule, informing the parties of their right, pursuant to 29 C.F.R. § 1978.109(c)(2), to file a brief in support of or in opposition to the ALJ's R. D. & O. within thirty days of the date the ALJ issued the R. D. & O. (April 6, 2006). Consolidated Freightways' counsel notified the Board that it did not intend to file a brief. Belt has not filed a brief.

The Secretary of Labor has delegated to the Board the authority to issue final agency decisions under, inter alia, the STAA and the implementing regulations at 29 C.F.R. Part § 1978. Secretary's Order 1-2002, 67 Fed. Reg. 64,272 (Oct. 2002). We are bound by the factual findings of the ALJ if those findings are supported by substantial evidence on the record considered as a whole. 29 C.F.R. §1978.109(c)(3); *BSP Transp., Inc. v. United States Dep't of Labor*, 160 F.3d 38, 46 (1st Cir. 1998); *Roadway Express, Inc. v. Dole*, 929 F.2d 1060, 1063 (5th Cir. 1991). However, the Board reviews questions of law de novo. See *Yellow Freight Sys., Inc. v. Reich*, 8 F.3d 980, 986 (4th Cir. 1993); *Roadway Express*, 929 F.2d at 1063.

We hold that substantial evidence in the record supports the ALJ's findings of fact. Consolidated Freightways filed for bankruptcy and Belt failed to file a proof of claim. The ALJ correctly applied the law. The bankruptcy court's plan of liquidation

discharged any liability Consolidated Freightways might have had toward Belt on his employee protection complaint under the STAA. Accordingly, we **AFFIRM** the ALJ's R. D. & O. and **DISMISS** Belt's complaint.

SO ORDERED.

WAYNE C. BEYER
Administrative Appeals Judge

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge