



**In the Matter of:**

**ROGER C. ELLIOT, JR.,**

**ARB CASE NO. 04-132**

**COMPLAINANT,**

**ALJ CASE NO. 02-STA-43**

**v.**

**DATE: January 28, 2005**

**CHRIS TRUCK LINE,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**FINAL DECISION AND DISMISSAL ORDER**

This case arises under Section 405, the employee protection provision, of the Surface Transportation Assistance Act of 1982 (STAA).<sup>1</sup> The Occupational Safety and Health Administration (OSHA) investigated Roger Elliot's complaint that the Respondent, Chris Truck Line, had discriminated against him in violation of the STAA's whistleblower protection provisions. On July 22, 2002, OSHA issued a report finding that Chris Truck Line had not violated the STAA. Elliot requested a hearing before a Department of Labor Administrative Law Judge (ALJ).<sup>2</sup>

Prior to the hearing, Elliot verbally withdrew his objections to OSHA's findings because he did not want to expend either the time or money necessary to pursue his objections at a hearing.<sup>3</sup> Elliot confirmed this request in writing in a document dated September 3, 2002.<sup>4</sup> Under the STAA's implementing regulations a party may withdraw

<sup>1</sup> 49 U.S.C.A. § 31105 (West 1997).

<sup>2</sup> See 29 C.F.R. § 1978.105 (2004).

<sup>3</sup> Order Approving Complainant's Withdrawal of Objections to Findings of OSHA Regional Administrator and Affirming Said Findings at 1.

<sup>4</sup> *Id.*

his or her objections to the Assistant Secretary of Labor for Occupational Safety and Health's findings "[a]t any time before the findings or order become final . . . by filing a written withdrawal with the administrative law judge."<sup>5</sup> The ALJ issued a Decision and Order Approving the Complainant's Withdrawal of Objections to Findings of OSHA Regional Administrator and Affirming Said Findings (D. & O.) on October 11, 2002.

The ALJ's decision and the record were forwarded to the Administrative Review Board for automatic review and to issue a final decision on June 30, 2004.<sup>6</sup> The Board issued a Notice of Review and Briefing Schedule informing the parties that any party who believed that the Board should not approve the D. & O. should show cause by July 28, 2004, why the Board should not approve the D. & O. Neither party filed a response to the Board's notice.

The Board is required to issue a final decision and order based on the record and the ALJ's decision and order of October 11, 2002.<sup>7</sup> Accordingly, the Board has reviewed the record and the D. & O. Finding it to be supported by substantial evidence and in accordance with law,<sup>8</sup> we **APPROVE** Elliot's withdrawal of objections and **AFFIRM** the ALJ's D. & O.

**SO ORDERED.**

**OLIVER M. TRANSUE**  
**Administrative Appeals Judge**

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

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<sup>5</sup> See 29 C.F.R. § 1978.111(c).

<sup>6</sup> 29 C.F.R. § 1978.109(a).

<sup>7</sup> 29 C.F.R. § 1978.109(c)(1).

<sup>8</sup> We review the ALJ's findings of fact under the substantial evidence standard. 29 C.F.R. § 1978.109(c)(3). 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 . . ." 5 U.S.C.A. § 557(b) (West 1996). Therefore, the Board reviews the ALJ's legal conclusions de novo. See *Roadway Express, Inc. v. Dole*, 929 F.2d 1060, 1066 (5th Cir. 1991).