



In the Matter of:

STANLEY L. REED,

ARB CASE NO. 08-031

COMPLAINANT,

ALJ CASE NO. 2008-STA-003

v.

DATE: October 31, 2008

CTJ ENTERPRISES,

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Stanley L. Reed, *pro se*, Jasper, Georgia

FINAL DECISION AND DISMISSAL ORDER

The Complainant, Stanley L. Reed, filed a whistleblower complaint with the Occupational Safety and Health Administration (OSHA), alleging that the Respondent, CTJ Enterprises, violated the employee protection provisions of the Surface Transportation Assistance Act (STAA)¹ and its implementing regulations² when it discharged him from his position as a truck driver following a rollover accident.

¹ 49 U.S.C.A. § 31105 (West 2008), as amended by the Implementing Recommendations of the 9/11 Commission Act of 2007, P.L. 110-53, 121 Stat. 266 (Aug. 3, 2007). 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. The amended provisions are not at issue in this case and thus do not affect our decision.

² 29 C.F.R. Part 1978 (2007).

OSHA investigated the complaint and found it to have no merit.³ Specifically, OSHA determined that the cause of the accident was Reed's excessive speed and not, as Reed had claimed, deficiencies of the truck.⁴ Reed objected and requested a hearing by a Department of Labor Administrative Law Judge (ALJ).⁵

The ALJ to whom the case had been assigned held a conference call on December 4, 2007, with Reed and counsel for CTJ Enterprises. During the course of the conference call, Reed expressed his desire that his request for a hearing be dismissed. Later that day, Reed wrote the ALJ that he wished to withdraw his request for a hearing, which the ALJ received on December 7, 2007.

On December 17, 2007, the ALJ issued a Recommended Order of Dismissal Granting Complainant's Request to Dismiss (R. O.). The ALJ acknowledged Reed's withdrawal of his request for a hearing and found that Reed "made a voluntary, knowing, and intelligent waiver of his right to formal hearing."⁶ Thus, the ALJ granted Reed's request to withdraw his appeal for a formal hearing, dismissed Reed's request for hearing pursuant to 29 C.F.R. § 1978.111(c),⁷ and ordered that OSHA's determination be affirmed as the final determination of the Secretary.⁸

The ALJ forwarded the file and his recommended decision to the Administrative Review Board for review and to issue a final agency decision pursuant to the STAA's automatic review provisions.⁹ The Secretary of Labor has delegated to the Board her

³ OSHA's Findings and Order, October 2, 2007.

⁴ *Id.*

⁵ *See* 29 C.F.R. § 1978.105(a).

⁶ R. O. at 2.

⁷ 29 C.F.R. § 1978.111(c) provides in relevant part:

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.

⁸ R. O. at 2.

⁹ *See* 49 U.S.C.A. § 31105(b)(2)(C); 29 C.F.R. § 1978.109(c)(1).

authority to issue final agency decisions under the STAA.¹⁰ When reviewing STAA cases, the Board is bound by the ALJ's factual findings if those findings are supported by substantial evidence in the record considered as a whole.¹¹ 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"¹² Therefore, the Board reviews the ALJ's legal conclusions de novo.¹³

On December 21, 2007, 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.¹⁴ Reed informed the Board by telephone of his decision not to file a brief and CTJ Enterprises also did not file a brief with the Board.

Accordingly, we **GRANT** Reed's request to withdraw his objections to OSHA's preliminary findings, which therefore become the final decision of the Department of Labor.

SO ORDERED.

WAYNE C. BEYER
Administrative Appeals Judge

OLIVER M. TRANSUE
Administrative Appeals Judge

¹⁰ Secretary's Order 1-2002, 67 Fed. Reg. 64,272 (Oct. 17, 2002); 29 C.F.R. § 1978.109(a).

¹¹ 29 C.F.R. § 1978.109(c)(3); *BSP Trans, Inc. v. United States 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).

¹² 5 U.S.C.A. § 557(b) (West 1996).

¹³ *See Roadway Express, Inc. v. Dole*, 929 F.2d 1060, 1066 (5th Cir. 1991).

¹⁴ *See* 29 C.F.R. § 1978.109(a).