



In the Matter of:

VIRGIL MYERS,

ARB CASE NO. 08-096

COMPLAINANT,

ALJ CASE NO. 2008-STA-037

v.

DATE: February 27, 2009

G-n-S ASTLE TRUCKING, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

FINAL DECISION AND DISMISSAL ORDER

The Complainant, Virgil Myers, filed a whistleblower complaint with the Occupational Safety and Health Administration (OSHA) alleging that the Respondent, G-n-S Astle Trucking, Inc., violated the employee protection provisions of the Surface Transportation Assistance Act (STAA)¹ and its implementing regulations² when it discharged him from employment.

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 that G-n-S had not discharged Myers in reprisal for engaging in activity protected by the STAA. Myers objected and requested a hearing before a Department of Labor Administrative Law Judge (ALJ).³

On June 4, 2008, Myers filed with the ALJ a “Withdrawal of Complaint and Motion to Dismiss Proceeding,” informing the ALJ that he wished to withdraw “his claim against the Respondent under 49 U.S.C. § 31105.” Two days later, the ALJ issued a Decision and Order (D. & O.), dismissing Myers’ STAA claim.⁴ The ALJ forwarded the D. & O. and the administrative record to the Administrative Review Board (ARB or Board). The case is before us pursuant to the STAA’s automatic review provisions.⁵

The Secretary of Labor has delegated to the Board her authority to issue final agency decisions under the STAA.⁶ 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.⁷ 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”⁸ Therefore, the Board reviews the ALJ’s legal conclusions de novo.⁹

On June 16, 2008, 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.¹⁰ Neither party filed a brief.

³ See 29 C.F.R. § 1978.105(a).

⁴ D. & O. at 2.

⁵ See 49 U.S.C.A. § 31105(b)(2)(C); 29 C.F.R. § 1978.109(c)(1).

⁶ Secretary’s Order 1-2002, 67 Fed. Reg. 64,272 (Oct. 17, 2002); 29 C.F.R. § 1978.109(a).

⁷ 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).

⁸ 5 U.S.C.A. § 557(b) (West 1996).

⁹ See *Roadway Express, Inc. v. Dole*, 929 F.2d 1060, 1066 (5th Cir. 1991).

¹⁰ See 29 C.F.R. § 1978.109(a).

Myers has not objected to the ALJ's decision to recommend dismissal of his STAA case. Accordingly, Myers' case is hereby **DISMISSED**.

SO ORDERED.

WAYNE C. BEYER
Chief Administrative Appeals Judge

OLIVER M. TRANSUE
Administrative Appeals Judge