



In the Matter of:

MICHAEL DRAKE,

ARB CASE NO. 05-067

COMPLAINANT,

ALJ CASE NO. 2005-STA-3

v.

DATE: July 14, 2006

YELLOW TRANSPORTATION,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Respondent:

Anderson B. Scott, Esq., Fisher & Phillips LLP, Atlanta, Georgia

**FINAL DECISION AND ORDER APPROVING WITHDRAWAL OF
OBJECTIONS TO OSHA'S FINDINGS**

This case arises under Section 405, the employee protection provision, of the Surface Transportation Assistance Act of 1982 (STAA).¹ Michael Drake filed a complaint alleging that Yellow Transportation, Inc. violated the STAA when it issued him a written warning after he refused to drive because he was fatigued. After investigating the complaint, the Occupational Safety and Health Administration (OSHA) determined that since the written warning had expired, "no further investigation was appropriate."²

¹ 49 U.S.C.A. § 31105 (West 1997).

² Recommended Order Dismissing Request for Hearing at 1 (R. O.).

Drake objected to OSHA's findings and requested a hearing before a Department of Labor Administrative Law Judge (ALJ).³ On February 23, 2005, Drake submitted a letter to the ALJ indicating that because of his health problems, his father's terminal illness and his understanding that the warning letter had "aged off" and is being removed from his file, he wished to withdraw his complaint.⁴

The STAA regulations pertaining to withdrawal of a complaint provide that an employee may withdraw his or her complaint "at any time prior to the filing of objections to the findings or preliminary order." 29 C.F.R. § 1978.111(a). Drake sent the letter requesting to withdraw the complaint after he had filed his objections to OSHA's findings. Accordingly, the ALJ treated Drake's letter as a request to withdraw his objections to OSHA's findings as provided in 29 C.F.R. § 1978.111(c). This regulation provides:

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 The judge . . . shall affirm any portion of the findings or preliminary order with respect to which the objection was withdrawn.[⁵]

In accordance with these regulations, the ALJ issued a Recommended Order Dismissing Request for Hearing on March 2, 2005.⁶

The ALJ's decision and the record were forwarded to the Administrative Review Board for automatic review and to issue a final decision.⁷ The Board issued a Notice of Review and Briefing Schedule, directing the parties to file briefs in support of or in opposition to the R.O., within thirty days from the date on which the ALJ issued it.⁸ Although Drake received a copy of the Board's Notice on March 8, 2005, as indicated by his

³ See 29 C.F.R. § 1978.105 (2005).

⁴ R. O. at 1.

⁵ 29 C.F.R. § 1978.111(c).

⁶ R. O. at 1-2.

⁷ 29 C.F.R. § 1978.109(a). *Accord Holmes v. Roadway Express, Inc.*, ARB No. 05-112, ALJ No. 2005-STA-20 (ARB Apr. 28, 2006); *Pardis v. B & I Auto Supply*, ARB No. 05-103, ALJ No. 2005-STA-17 (ARB Mar. 27, 2006); *Palmer v. G.W. Lumber & Mill Work, Inc.*, ARB No. 04-141, ALJ No. 2004-STA-45 (ARB Sept. 27, 2005).

⁸ See 29 C.F.R. § 1978.109(c)(2).

signature on the Domestic Return Receipt, Drake did not file a brief. Yellow Transportation filed a brief in support of the R. O.

The Board is required to issue a final decision and order based on the record and the decision and order of the ALJ.⁹ It would have been preferable for the ALJ to confirm with Drake that he understood that he could not timely withdraw his complaint and that instead, by withdrawing his objections to OSHA's findings; these findings would stand as affirmed. But, although offered the opportunity, Drake has not challenged the ALJ's interpretation of his request to withdraw his complaint as a request to withdraw his objections to OSHA's findings. Accordingly, we **APPROVE** the R. O. and **DISMISS** Drake's objections to OSHA's findings.

SO ORDERED.

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

WAYNE C. BEYER
Administrative Appeals Judge

⁹ 29 C.F.R. § 1978.109(c)(1).