

U.S. Department of Labor

Office of Administrative Law Judges
Seven Parkway Center - Room 290
Pittsburgh, PA 15220

(412) 644-5754
(412) 644-5005 (FAX)



Issue Date: 02 June 2005

Claim No. 2005-STA-17

In the Matter of:

RANDY J. PARADIS,
Complainant,

v.

B & I AUTO SUPPLY,
Respondent.

**RECOMMENDED ORDER APPROVING WITHDRAWAL OF
OBJECTIONS AND DISMISSING CLAIM**

This matter is before me pursuant to a complaint under the “whistleblower” employee protection provisions of Section 405 of the Surface Transportation Assistance Act of 1982 (the Act), as amended, 49 U.S.C. § 31105 (formerly 49 U.S.C. § 2305), and its implementing regulations at 29 C.F.R. Part 1978. Section 31105 of the Act provides protection from discrimination to employees who report violations of commercial motor vehicle safety rules or who refuse to operate a vehicle when the operation would be a violation of those rules.

The instant complaint was filed by Randy J. Paradis (Complainant) with the U.S. Department of Labor’s Occupational Safety and Health Administration (OSHA) on November 22, 2004. Regional OSHA Administrator Richard Soltan issued the Assistant Secretary’s Findings and Order (Findings) on January 5, 2005. The Findings concluded that Complainant is not a covered employee under the Act and that, even if Complainant were a covered employee, he did not suffer discrimination within the meaning of the Act. In response to the Findings, Complainant filed a request for hearing on January 28, 2005.

Upon transfer of the file to the Office of Administrative Law Judges, I issued a Notice of Hearing on February 11, 2005. Complainant filed a letter on May 31, 2005, stating that he wishes to withdraw his request for a hearing.

Under 29 C.F.R. § 1978.111(c), a party may withdraw its objections to the Secretary’s preliminary findings, allowing the Administrative Law Judge to enter an order affirming them. In this case, I construe Complainant’s letter to indicate a desire to withdraw his objections to the Assistant Secretary’s Findings and Order. *See Creech v. Salem Carriers, Inc.*, 88-STA-29 (Sec’y Sept. 27, 1988). No issues therefore remain to be resolved through a hearing. I hereby reinstate and affirm the preliminary findings contained in the Findings. *See Shown v. Wilson Truck Corp.*, 92-STA-6 (Sec’y Apr. 30, 1992).

Therefore, it is **ORDERED** that:

1. Complainant's request to withdraw his objections to the Assistant Secretary's Findings and Order is **GRANTED** pursuant to 29 C.F.R. § 1978.111(c).
2. The hearing scheduled to begin June 21, 2005 is **CANCELLED**.
3. The Assistant Secretary's Findings and Order issued January 5, 2005 is affirmed and reinstated. The complaint is therefore **DISMISSED**.

It is so Ordered.

A

MICHAEL P. LESNIAK
Administrative Law Judge

NOTICE: This Recommended Order Approving Withdrawal of Objections and Dismissing Claim, and the administrative file in this matter, will be forwarded to the Administrative Review Board, U.S. Department of Labor, Room S-4309, 200 Constitution Avenue, NW, Washington DC 20210, for entry of a Final Order. *See* 29 C.F.R. § 1978.109(a) and 1978.109(c). The parties may file with the Administrative Review Board briefs in support of or in opposition to Recommended Order Approving Withdrawal of Objections and Dismissing Claim within thirty days of the issuance of this Recommended Order unless the Administrative Review Board, upon notice to the parties, establishes a different briefing schedule. 29 C.F.R. § 1978.109(c).