

## **STATEMENT OF JOHN SIMON**

My name is John Simon and I reside in Lake Villa, Illinois. I am a single father of a teenage daughter, a homeowner and a whistleblower. I began working as a commercial truck driver in 1986. In November of 2004, I was hired to drive for a small fuel hauler called Sancken Trucking.

My employer told me that I should not keep a daily driver's log. DOT regulations required that I keep such a log, recording my on-duty time, driving time and break time. I told my employer that it was wrong not to keep the DOT log. I notified the Federal Motor Carrier Safety Administration's office in Springfield, Illinois that my employer told me not to keep a daily log. A few weeks later I filed a written complaint with FMCSA and a written complaint with OSHA.

In January 2005, I was injured at work and received workers compensation benefits. I was off work for about 6 weeks. In March 2005, the FMCSA audited my employer for compliance with DOT Safety Regulations. I tried to return to work when my doctor cleared me to return after my injuries healed. I reported back to work just as the DOT audit of my employer was being completed. I was fired on the next day, March 11, 2005.

On April 8, 2005, I filed a complaint with OSHA because I believed I was fired for filing complaints with the FMCSA and OSHA. OSHA dismissed my claim about 2 months later. I hired an attorney who requested a hearing before an administrative law judge from the Department of Labor. A hearing took place before Judge Leland of the Department of Labor in September 2005.

On January 11, 2006, Judge Leland issued a recommended order awarding me back pay, other damages, and attorney fees. He also ordered Sancken Trucking to immediately reinstate me. The law requires that the reinstatement is immediate, even if an appeal is taken to the Department of Labor's Administrative Review Board.

On January 16, 2006, I informed Sancken Trucking that I had received the order reinstating me to previous position and my provision rate of pay and that I wanted to return to work. They refused to reinstate me. Instead they told me that I was going to be treated like a new employee with less pay and a different schedule in violation of Judge Leland's order that I be reinstated to my previous position.

My attorney asked the Office of the Solicitor of Labor to bring a civil suit to enforce Judge Leland's order reinstating me. On May 24 2006, the Solicitor's Office filed suit for an injunction forcing Sancken Trucking to reinstate me. During this process I was without the health insurance benefits I had received when I worked for Sancken Trucking. On August 17, 2006, a Judge issued an injunction ordering Sancken Trucking to comply with Judge Leland's order reinstating me to my former position at my former rate of pay. When I reported back to work it appeared that Sancken Trucking was going to make it as difficult as possible for me to work there. I chose to leave the trucking industry. I was tired of fighting. I already had other employment with health insurance but at lesser rate of pay than Sancken Trucking had promised me.

The periods of unemployment since my discharge have imposed a terrible

financial burden on my family and me. The periods when I was without health insurance, the long periods of unemployment, the loss of my job, the stress of the legal process and waiting for a final decision for such long time have caused me great emotional distress.

I was recently released from my last employment position because of my past experiences with Sancken Trucking. My boss told me that he could not get past what had happened between Sancken Trucking and myself.

Although I won a recommended decision from the administrative law judge in January 2006, no final decision has yet been issued. The law requires the Secretary of Labor to issue a final decision in trucking whistleblower cases within 120 days after the hearing. I understand that the Department of Labor's Review Board is taking 2-1/2 to 3 years to decide cases after the administrative law judges issue decisions in cases that have had full hearings. This means that I will have to wait another year or more for a final order. If Sancken Trucking appeals further, or if the ARB sends the case back to the ALJ, it may be 3 or years more before my case is over and I can put this behind me.

Employees who discharged for refusing to break the law or filing complaints cannot afford to wait for the Administrative Review Board to take two and a half to three years to decide cases. They have bills to pay and families to support. I lost thousands of dollars due to Sancken Trucking firing me. I have run up large balances on my credit cards and tapped all of my savings just to survive. I have recently spoken with several realtors because I may need to sell my home in order to avoid bankruptcy. I cannot explain to my 15-year old daughter why we

may have to sell our home.

Had I known then what I know now, I may not have blown the whistle on my employer. I just don't know what I would have done. I may have just quit and moved on. But Sancken Trucking would likely still be violating the federal truck safety regulations.

The process needs to be reformed so that the Department of Labor's Review Board decides cases promptly and within the 120-day period prescribed in the law. Procedures need to be put in place so that when an employer disobeys an order for reinstatement an enforcement action is brought promptly so the employee is guaranteed wages during the appeal process. Finally, employers who violate the truck driver whistleblower law should be subject to punitive damages, which will work as an incentive for them to obey the law.