



In the Matter of:

BILL C. LESCH,

ARB CASE NO. 08-099

COMPLAINANT,

ALJ CASE NO. 2008-STA-035

v.

DATE: September 30, 2008

STOUGHTON TRUCKING,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Respondent:

Heather M. Tiltmann, Esq., Whyte Hirschboeck Dudek S.C., Milwaukee, Wisconsin

FINAL DECISION AND DISMISSAL ORDER

Bill C. Lesch complained that Stoughton Trucking violated the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA),¹ and its implementing regulations,² when it discharged him for answering questions from a United States Department of Transportation (DOT) Compliance and Safety Director regarding driving over DOT allowed hours.

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).

After an investigation, the Occupational Safety and Health Administration (OSHA) found that Stoughton fired Lesch for not reimbursing or accounting for \$260.47 in cash advances on a company “Comdata” (ATM-type) card to be used for business related expenses.³ Accordingly, OSHA dismissed the complaint.⁴ Lesch objected to OSHA’s findings and requested a hearing before a Department of Labor (DOL) Administrative Law Judge (ALJ).⁵

The ALJ scheduled the case for hearing, but on June 13, 2008, Lesch, acting pro se, wrote that he “wished to withdraw” his complaint. Counsel for Stoughton replied that she had no objection to the dismissal of the complaint. On June 17, 2008, the ALJ issued a Recommended Order Approving Withdrawal of Objections, Dismissing Claim, and Cancelling Hearing (R. O.). The ALJ noted that pursuant to 29 C.F.R. § 1978.111(c), a party may withdraw his or her objections to the findings or order of OSHA by filing a written withdrawal with the administrative law judge.⁶ Accordingly, the ALJ canceled the hearing and dismissed Lesch’s appeal with prejudice. R. O. at 1.

The ALJ forwarded his recommended decision and the administrative record to the Administrative Review Board (ARB or Board) and the case is now before us pursuant to the STAA’s automatic review provisions.⁷ The Secretary of Labor has delegated to the Board her authority to issue final agency decisions under the STAA.⁸ When reviewing STAA cases, the ARB is bound by the ALJ’s factual findings if those findings are supported by substantial evidence in the record considered as a whole.⁹ In reviewing the

³ OSHA’s Findings and Order, Feb. 19, 2008.

⁴ *Id.*

⁵ *See* 29 C.F.R. § 1978.105.

⁶ R. O. at 1. 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.

⁷ *See* 29 C.F.R. § 1978.109(c)(1).

⁸ Secretary’s Order 1-2002 (Delegation of Authority and Responsibility to the Administrative Review Board), 67 Fed. Reg. 64,272 (Oct. 17, 2002); 29 C.F.R. § 1978.109(a).

⁹ 29 C.F.R. § 1978.109(c)(3); *BSP Trans, Inc. v. U.S. 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).

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" ¹⁰ Therefore, the Board reviews the ALJ's legal conclusions de novo. ¹¹

On June 24, 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 ALJ's decision, or by July 17, 2008. ¹² Neither Lesch nor Stoughton responded to the Board's order.

Accordingly, we **GRANT** Lesch's unopposed motion to withdraw his complaint.

SO ORDERED.

WAYNE C. BEYER
Administrative Appeals Judge

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

¹⁰ 5 U.S.C.A. § 557(b) (West 1996).

¹¹ *See Roadway Express, Inc. v. Dole*, 929 F.2d 1060, 1066 (5th Cir. 1991).

¹² *See* 29 C.F.R. § 1978.109(c)(2).