In the Matter of:

RUSSELL OLSON, **ARB CASE NO. 03-049**

COMPLAINANT, **ALJ CASE NO. 02-STA-12**

v. **DATE: May 28, 2004**

HI-VALLEY CONSTRUCTION COMPANY,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:
James E. Davis, Esq., ***Talbott, Simpson, Gibson & Davis, Inc. P.S., Yakima, Washington***

For the Respondent:
Ryan M. Edgley, Esq., ***Edgley & Beattie, P.S., Yakima, Washington***

FINAL DECISION AND ORDER

Russell Olson filed a complaint under the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA), as amended and recodified, 49 U.S.C.A. § 31105 (West 2004), alleging that his employer, Hi-Valley Construction Company (Hi-Valley) terminated his employment because he refused to drive an overweight tractor-tanker hauling lignin.[1] On January 28, 2003, a Department of Labor Administrative Law Judge (ALJ) issued a Recommended Decision and Order (R. D. & O.) dismissing Olson's complaint. The R. D. & O. is now before the Administrative Review Board (ARB) pursuant to 49 U.S.C.A. § 31105(b)(2)(C) and 29 C.F.R. § 1978.109(c)(1)(2003).

[1] Lignin consists of a mixture of wood pulp and water, which weighs 9.6 pounds per gallon and is sprayed on roads to keep the dust down. Hearing Transcript (TR) at 106-07, 113-14.

STANDARD OF REVIEW

Under the STAA, the ARB is bound by the factual findings of the ALJ if supported by substantial evidence on the record considered as a whole. 29 C.F.R. § 1978.109(c)(3); *Lyninger v. Casazza Trucking Co.*, ARB No. 02-113, ALJ No. 01-STA-38, slip op. at 2 (ARB Feb. 19, 2004). Substantial evidence is that which is "more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Clean Harbors Envtl. Servs. v. Herman*, 146 F.3d 12, 21 (1st Cir. 1998), quoting *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *McDede v. Old Dominion Freight Line, Inc.*, ARB No. 03-107, ALJ No. 03-STA-12, slip op. at 3 (ARB Feb. 27, 2004).

In reviewing the ALJ's conclusions of law, the ARB, as the designee of the Secretary, acts with "all the powers [the Secretary] would have in making the initial decision . . .." 5 U.S.C.A. § 557(b) (West 2004). Therefore, we review the ALJ's conclusions of law de novo. *Roadway Express, Inc. v. Dole*, 929 F.2d 1060, 1066 (5th Cir. 1991); *Monde v. Roadway Express, Inc.*, ARB No. 02-071, ALJ Nos. 01-STA-22, 01-STA-29, slip op. at 2 (ARB Oct. 31, 2003).

DISCUSSION

To prevail on a claim under the STAA, the complainant must prove by a preponderance of the evidence that he engaged in protected activity, that his employer was aware of the protected activity, that the employer discharged, disciplined, or discriminated against him, and that there is a causal connection between the protected activity and the adverse action. *BSP Trans, Inc. v. United States Dep't of Labor*, 160 F.3d 38, 45 (1st Cir. 1998); *Yellow Freight Sys., Inc. v. Reich*, 27 F.3d 1133, 1138 (6th Cir. 1994); *Schwartz v. Young's Commercial Transfer, Inc.*, ARB No. 02-122, ALJ No. 01-STA-33, slip op. at 8-9 (Oct. 31, 2003).

The ALJ determined that Olson was not credible in testifying about the condition and weight of the truck-tanker he was employed to drive. R. D. & O. at 14. Furthermore, he found that Olson failed to prove that he engaged in protected activity on April 23, 2001, when he refused to continue to drive his truck. R. D. & O. at 15-20. The ALJ also found that Olson failed to prove that Hi-Valley fired him. R. D. & O. at 21-22. And the ALJ found that even if both protected activity and adverse action had occurred, Olson failed to prove that Hi-Valley retaliated against him for the protected activity. R. D. & O. at 22. Accordingly, the ALJ dismissed Olson's complaint. *Id.*

We have reviewed the record and find that substantial evidence on the record as a whole supports the ALJ's findings. They are therefore conclusive. 29 C.F.R. § 1978.109(c)(3). *See* R. D. & O. at 4-14, and record citations therein. The record also supports the ALJ's credibility determinations. In his thorough, well-reasoned discussion,

he applied the correct legal standard to his findings. Therefore, we adopt the ALJ's decision, attach and incorporate the R. D. & O and **DENY** Olsen's complaint.[2]

SO ORDERED.

OLIVER M. TRANSUE
Administrative Appeals Judge

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

[2] On February 6, 2003, the ARB issued a Notice of Review and Briefing Schedule to counsel representing the parties. The ARB received postal cards indicating that both parties had received the briefing notice. The Respondent submitted a brief on February 26, 2003, but the Complainant did not. The Complainant and his counsel did not return telephone calls from ARB staff on January 5, 2004. In view of our disposition of this case, we decline to address the Respondent's argument that RCW (Revised Code of Washington) § 46.44.041 is not a safety regulation.