



In the Matter of:

VON HUBBARD,

ARB CASE NO. 06-022

COMPLAINANT,

ALJ CASE NO. 2005-STA-062

v.

DATE: December 21, 2007

UNITED PARCEL SERVICE, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

FINAL DECISION AND ORDER

On June 2, 2005, Von Hubbard filed a whistleblower complaint with the United States Department of Labor alleging that his employer, United Parcel Service, Inc. (UPS), violated the employee protection provisions of the Surface Transportation Assistance Act (STAA)¹ by discharging him from employment. The STAA prohibits certain employers from retaliating against employees who complain about or report violations of commercial motor vehicle safety requirements.²

After investigating Hubbard's allegations, the Occupational Safety and Health Administration (OSHA) found that UPS did not violate the STAA. Hubbard objected to the OSHA finding and requested a hearing before a Department of Labor Administrative

¹ 49 U.S.C.A. § 31105 (West 1997).

² "A person may not discharge an employee, or discipline or discriminate against an employee regarding pay, terms, or privileges of employment, because . . . the employee, or another person at the employee's request, has filed a complaint or begun a proceeding related to a violation of a commercial motor vehicle safety regulation, standard, or order, or has testified or will testify in such a proceeding . . ." 49 U.S.C.A. § 31105(a)(1)(A)(West 1997).

Law Judge (ALJ).³ The ALJ scheduled a hearing for November 29, 2005, but on November 8, 2005, Hubbard, through counsel, withdrew his objections to OSHA's finding. On November 17, 2005, the ALJ issued an Order Vacating Hearing and Dismissing Case (Order).

The Secretary of Labor has delegated to the Administrative Review Board (ARB) the authority to issue final agency decisions under the STAA and the implementing regulations at 29 C.F.R. Part 1978.⁴ We automatically review an ALJ's recommended STAA decision.⁵ When reviewing STAA cases, the ARB is bound by the ALJ's factual findings if they are supported by substantial evidence on the record considered as a whole.⁶ The ARB reviews the ALJ's legal conclusions *de novo*.⁷

On December 6, 2006, the Board issued a Notice of Review and Briefing Schedule, notifying the parties of their right to file briefs in support of or in opposition to the Order. UPS filed a statement with the Board indicating that it did not intend to file a brief. Hubbard's counsel received our Notice of Review and Briefing Schedule and did not object to the Order granting Hubbard's request to withdraw his STAA claim.

The STAA regulations permit a party to withdraw his objections to the OSHA finding at any time before that finding becomes final.⁸ Before the Board issued a final decision in this case, Hubbard withdrew his objections to the Secretary's initial findings. Accordingly, we **AFFIRM** the ALJ's recommended decision granting Hubbard's request

³ See 29 C.F.R. § 1978.105(a). Unless a party files a timely objection to OSHA's findings or preliminary order or both, the findings or preliminary order become final. 29 C.F.R. § 1978.105(b)(2).

⁴ See Secretary's Order 1-2002, 67 Fed. Reg. 64,272 (Oct. 17, 2002).

⁵ 29 C.F.R. § 1978.109(a).

⁶ 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).

⁷ *Roadway Express, Inc. v. Dole*, 929 F.2d 1060, 1066 (5th Cir. 1991); *Monde v. Roadway Express, Inc.*, ARB No. 02-071, ALJ Nos. 2001-STA-022, 2001-STA-029, slip op. at 2 (ARB Oct. 31, 2003).

⁸ 29 C.F.R. § 1978.111(c). This regulation provides in pertinent 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 The judge . . . shall affirm any portion of the findings or preliminary order with respect to which the objection was withdrawn.

to withdraw his objections to the Secretary's preliminary findings and affirming those findings denying his complaint as provided in 29 C.F.R. § 1978.111(c).

SO ORDERED.

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

WAYNE C. BEYER
Administrative Appeals Judge