



In the Matter of:

LINDA G. BALAZS,

ARB CASE NO. 06-095

COMPLAINANT,

ALJ CASE NO. 2006-STA-002

v.

DATE: September 28, 2007

DIMARE FRESH, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearance:

For the Respondent:

W. Stephen Cockerham, Esq., Hunton & Williams LLP, Dallas, Texas

FINAL DECISION AND ORDER

This case arises under the employee protection provisions of the Surface Transportation Assistance Act (STAA) of 1982, as amended and recodified, 49 U.S.C.A. § 31105 (West 1997).¹ Section 31105 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. Linda G. Balazs alleges that her former employer, DiMare Fresh, Inc., violated the STAA when it terminated her employment. After a hearing, a Department of Labor Administrative Law Judge (ALJ) concluded that DiMare Fresh did not violate the STAA because it fired Balazs for unsatisfactory performance. The Administrative Review Board automatically reviews an ALJ's recommended STAA decision. 29 C.F.R. § 1978.109(c)(1)(2007).

¹ The STAA has been amended since Balazs filed his complaint. *See* Implementing Recommendations of the 9/11 Commission Act of 2007, P.L. 110-53, 121 Stat. 266 (Aug. 3, 2007). Even if the amendments were applicable to this complaint, they would not affect our decision.

JURISDICTION AND STANDARD OF REVIEW

We have jurisdiction to decide this matter by authority of 49 U.S.C.A. § 31105(b)(2)(C) and 29 C.F.R. § 1978.109(c). Under the STAA, the Administrative Review Board is bound by the ALJ's factual findings if substantial evidence on the record considered as a whole supports those findings. 29 C.F.R. § 1978.109(c)(3); *BSP Transp., 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). 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 Env'tl. Servs. v. Herman*, 146 F.3d 12, 21 (1st Cir. 1998) (quoting *Richardson v. Perales*, 402 U.S. 389, 401 (1971)). In reviewing the ALJ's conclusions of law, the Board, as the Secretary's designee, acts with "all the powers [the Secretary] would have in making the initial decision . . ." 5 U.S.C.A. § 557(b) (West 1996). See also 29 C.F.R. § 1978.109(b). Therefore, the Board reviews the ALJ's conclusions of law de novo. *Roadway Express, Inc. v. Dole*, 929 F.2d 1060, 1066 (5th Cir. 1991).

DECISION

The ALJ's decision thoroughly and fairly recites the relevant facts underlying this dispute. We have reviewed the record and find that substantial evidence on the record as a whole supports the ALJ's findings. Those findings are therefore conclusive. 29 C.F.R. § 1978.109(c)(3). The ALJ's decision is in accordance with law.² Accordingly, we adopt and attach the ALJ's R. D. & O. and **DENY** Balazs's complaint.

SO ORDERED.

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

DAVID G. DYE
Administrative Appeals Judge

² On page 9 of the R. D. & O., the ALJ stated that "Respondent has proven by clear and convincing evidence that Complainant was terminated for a legitimate, non-discriminatory reason." Because Balazs "offered no evidence that there was a relationship between her protected activity and the adverse employment action" (R. D. & O. at 8, n.10), we interpret this language not as a statement of DiMare Fresh's burden of proof, but as a conclusory statement regarding the record evidence.