



In the Matter of:

HAROLD FREELAND,

ARB CASE NO. 08-124

COMPLAINANT,

ALJ CASE NO. 2008-STA-047

v.

DATE: November 28, 2008

**WEBB CONCRETE &
BUILDING MATERIALS**

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Robert J. Camp, Esq., *The Cochran Firm*, Birmingham, Alabama

For the Respondent:

Wesley C. Redmond, Esq., *Baker Donelson, P.C.*, Birmingham, Alabama

FINAL DECISION AND DISMISSAL ORDER

Harold Freeland complained that Webb Concrete & Building Materials (Webb) violated the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA),¹ and its implementing regulations,² when it discharged him on June 12, 2007 for voicing concerns about hours of service violations to his General Manager.

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

After an investigation, the Occupational Safety and Health Administration (OSHA) found that Freeland's allegations of violations of Department of Transportation (DOT) regulations regarding hours of service, overweight vehicles, and false log books were vague and non-specific.³ Accordingly, OSHA dismissed the complaint.⁴ Freeland requested a hearing before a Department of Labor (DOL) Administrative Law Judge (ALJ).⁵

The ALJ scheduled the case for hearing, but on July 29, 2008, Freeland's attorney wrote to the ALJ that Freeland wished to withdraw his request for a hearing and dismiss his claim. By Recommended Order (R. O.) dated July 30, 2008, the ALJ dismissed Freeland's complaint and cancelled the hearing.

The case is now before us pursuant to the STAA's automatic review provisions.⁶ The Secretary of Labor has delegated to the Board her authority to issue final agency decisions under the STAA.⁷ 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.⁸ In reviewing the 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"⁹ Therefore, the Board reviews the ALJ's legal conclusions de novo.¹⁰

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).

³ OSHA's Findings and Order, Mar. 18, 2008.

⁴ *Id.*

⁵ See 29 C.F.R. § 1978.105. Webb's attorney filed a Motion to Dismiss Complaint for Failure to File Timely Objections, pursuant to 29 C.F.R. § 1978.105. The ALJ denied the motion on July 10, 2008.

⁶ See 29 C.F.R. § 1978.109(c)(1).

⁷ 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).

⁸ 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).

⁹ 5 U.S.C.A. § 557(b) (West 1996).

¹⁰ See *Roadway Express, Inc. v. Dole*, 929 F.2d 1060, 1066 (5th Cir. 1991).

On August 12, 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 August 29, 2008.¹¹ Webb responded that it would not file a brief, and Freeland did not respond to the Board's order.

Accordingly, we **GRANT** Freeland's unopposed request to dismiss his complaint.

SO ORDERED.

OLIVER M. TRANSUE
Administrative Appeals Judge

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

¹¹ See 29 C.F.R. § 1978.109(c)(2).