

**U.S. Department of Labor**

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**Issue Date: 30 July 2004**

Case No. 2004-STA-33

In the Matter of

STEVEN MICHAEL BLANTON

Complainant

v.

PYLES TRANSPORT, INC.

Respondent

BEFORE: RUDOLF L. JANSEN  
Administrative Law Judge

DECISION AND ORDER DISMISSING REQUEST FOR HEARING

This proceeding arises under the employee protection provisions of 49 U.S.C. § 31105 of the Surface Transportation Assistance Act (STAA), and the applicable regulations issued thereunder at 29 C.F.R. Part 1978. On January 22, 2004, the Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, issued his Findings on a Complaint filed by Steven Michael Blanton against Pyles Transport, Inc. in which he concluded that it was reasonable to believe that the Respondent did not violate 49 U.S.C. § 31105.

In response to the Regional Administrator's Findings, the Complainant timely perfected an appeal in a written statement dated February 18, 2004. The case was subsequently scheduled for hearing in Louisville, Kentucky.

On June 25, 2004, I received a document from the Complainant in which he indicates that he could not afford an attorney and requested that his case be dropped and cancelled from the scheduled hearing. In response to that request, I issued an Order on July 7, 2004 indicating that the Complainant's statement was being treated as a request by the Complainant to withdraw his objections to the Secretary's Preliminary Findings and Order as provided by 29 C.F.R. § 1978.111(c). The Order noted that the Complainant's request had been made notwithstanding the regulatory provision that the successful prosecution of his case may result in an award of his costs and expenses, including attorney fees. 29 C.F.R. §

1978.109(a). No response was received from the Complainant to that Order. Mekesha H. Montgomery, Attorney for the Respondent submitted a statement indicating that Respondent, has no objection to Complainant's withdrawal of his objections to the Secretary's Preliminary Findings and Order.

Twenty-nine C.F.R. § 1978.111(c) permits a party to withdraw objections to the Secretary's Preliminary Findings or Preliminary Order at any time before the Findings or Order become final. Creech v. Salem Carriers, Inc., 88-STA-29 (Sec'y Sept. 27, 1988). Under these circumstances, the Administrative Law Judge must issue a final Order reinstating and affirming the Preliminary Findings of the Acting Regional Administrator. Shown v. Wilson Truck Corp., 92-STA-6 (Sec'y April 30, 1992). Fed. R. Civ. P. 41(a)(1) is not applicable since it permits a dismissal without prejudice only at a time before an Answer to the Complaint has been filed. In this case, the Secretary's Findings were issued on August 7, 2002 and the Complainant filed his objections in September of 2002 and those objections coupled with his request for hearing constitute an Answer and therefore render Rule 41 inapplicable. Sharp v. James Helwig & Son, Inc., supra. I will also treat the Complainant's Request for Dismissal of Request for Hearing as constituting a withdrawal of his objections to the Secretary's Preliminary Findings. Snow v. TTNT Red Star Express, Inc., 91-STA-44 (Sec'y March 13, 1992).

In view of the above, IT IS ORDERED that the Complainant's request to withdraw his objections to the Secretary's Findings and to dismiss his request for hearing is hereby GRANTED pursuant to authority conferred by 29 C.F.R. § 1978.111(c). The Findings of the Regional Administrator, Occupational Safety and Health Administration concluding that the Respondent had not violated 49 U.S.C § 31105 of the Act are hereby affirmed and reinstated. The complaint of Steven Michael Blanton is therefore DENIED. This Order is the final administrative action and no Secretarial review is required. Underwood v. Blue Springs Hatchery, 87-STA-21 (Dep. Sec'y Nov. 2, 1987 (Order to Show Cause)).

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RUDOLF L. JANSEN  
Administrative Law Judge