U.S. Department of Labor   Office of Administrative Law Judges
90 Seventh Street, Suite 4-800
San Francisco, CA 94103-1516

(415) 625-2200
(415) 625-2201 (FAX)

Issue Date: 29 November 2011

CASE NOs: 2010-STA-00058, -00059

ROBERT CLAPP,
          Complainant,

   and

RICHARD LINSTEADT,
          Complainant,

   v.

TIMBERLINE CONTRACTING AND INVESTMENTS, INC., and
SUCCESSORS IN INTEREST,
          Respondent,

   and

DANIEL JOSEPH PIÑA, SR.,
          Respondent.

Decision and Order

The Complainants, Robert Clapp and Richard Linsteadt, who drove trucks for the Respondent Timberline Contracting and Investments, Inc. (TCI), were both fired in November 2008. Each complained to the Occupational Safety and Health Administration (OSHA) under:

- the whistleblower protection provisions of the Surface Transportation Assistance Act (STAA or the Act) codified at 49 U.S.C. § 31105 and
- § 11(c) of the Occupational Safety and Health Act (OSH Act)

against TCI and Daniel Joseph Piña, Sr. An OSHA investigation led to the "Secretary's Findings and Preliminary Order" that found TCI and Daniel Joseph Piña, Sr. violated the STAA in both firings, and ordered

relief.[1] Those findings were served on parties on June 4, 2010.[2] Daniel Joseph Piña, Sr. filed a timely request for a de novo hearing on June 28, 2010[3]; TCI did not. The two drivers' cases were consolidated on August 3, 2010.[4] The Secretary of Labor withdrew as a prosecuting party on August 24, 2011. On November 28, 2011, the two drivers, who are represented by counsel, withdrew their complaints.

Accordingly, the hearing date of December 6, 2011 is vacated. These matters are dismissed with prejudice; no relief is ordered.

So Ordered.

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William Dorsey
ADMINISTRATIVE LAW JUDGE

San Francisco, California

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[1] Since the Complainants couldn't receive damage awards under both the OSH Act and the STAA, OSHA elected to pursue the STAA claim. *See Clapp v. Timberline Contracting and Investments, Inc.*, Secretary's Findings and Order, 2 (June 2, 2010) [hereinafter Secretary's Findings (Clapp)]; *Linsteadt v. Timberline Contracting and Investments, Inc.*, Secretary's Findings and Order, 2 (June 2, 2010) [hereinafter Secretary's Findings (Linsteadt)].

[2] Declaration of Victoria A. Coleman, OSHA Regional Supervisory Investigator, at ¶ 4 (Nov. 30, 2010).

[3] Letters from Andrew M. Schlesinger, Counsel for Daniel Joseph Piña, Sr. to Chief Administrative Law Judge, RE: Robert Clapp and Roger Linsteadt (June 28, 2010).

[4] Judge Gerald M. Etchingham, Order Consolidating Hearings and Continuing Hearing Date, 1 (Aug. 3, 2010).

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within ten (10) business days of the date of issuance of the administrative law judge's decision. The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210. In addition to filing your Petition for Review with the Board at the foregoing address, an electronic copy of the Petition may be filed by e-mail with the Board, to the attention of the Clerk of the Board, at the following e-mail address: ARB-Correspondence@dol.gov.

Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-mail communication; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. *See* 29 C.F.R. § 1978.110(a). Your Petition must specifically identify the findings, conclusions or orders to which you object. You waive any objections you do not raise specifically. *See* 29 C.F.R. § 1978.110(a).

At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and, in cases in which the Assistant Secretary is a party, on the Associate Solicitor for Occupational Safety and Health. *See* 29 C.F.R. § 1978.110(a).

You must file an original and four copies of the petition for review with the Board, together with one copy of this decision. In addition, within 30 calendar days of filing the petition for review you must file with the Board: (1) an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and (2) an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which the appeal is taken, upon which you rely in support of your petition for review.

Any response in opposition to a petition for review must be filed with the Board within 30 calendar days from the date of filing of the petitioning party's supporting legal brief of points and authorities. The response in opposition to the petition for review must include: (1) an original and four copies of the responding party's legal brief of points and authorities in opposition to the petition, not to exceed thirty double-spaced typed pages, and (2) an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from

which appeal has been taken, upon which the responding party relies, unless the responding party expressly stipulates in writing to the adequacy of the appendix submitted by the petitioning party.

Upon receipt of a legal brief filed in opposition to a petition for review, the petitioning party may file a reply brief (original and four copies), not to exceed ten double-spaced typed pages, within such time period as may be ordered by the Board.

If no Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. §§ 1978.109(e) and 1978.110(a). Even if a Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days of the date the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. §§ 1978.110(a) and (b).