



Issue Date: 11 May 2010

CASE NO.: 2010-STA-00028

In the Matter of:

DENNIS C. SCHUKAY,
Complainant,

v.

C&R TRANSPORTATION & REPAIR,
Respondent.

**RECOMMENDED DECISION AND ORDER APPROVING COMPLAINANT'S REQUEST FOR
DISMISSAL OF HIS STAA COMPLAINT, AND ORDER CANCELLING HEARING**

This case arose when the complainant, Dennis C. Schukay ("Complainant"), filed a complaint on March 26, 2009 under the employee protection provisions of the Surface and Transportation Assistance Act ("STAA"), 49 U.S.C.A. § 31105, alleging that his employer, C&R Transportation & Repair ("Respondent"), discharged his employment in retaliation for raising commercial motor vehicle safety concerns about driving while intoxicated and driving in violation of the U.S. Department of Transportation hours of service rule and/or for refusing to drive in violation of the hours of service rule.

On February 9, 2010, the Secretary of Labor, acting through her agent, the Regional Administrator for the Occupational Safety and Health Administration, (Secretary) issued Secretary's Findings containing specific factual findings and legal conclusions which resulted in the dismissal of the complaint in this case (the "Secretary's Findings").

On February 22, 2010, Complainant objected to the Secretary's Findings and requested a hearing before this Office. Trial is currently set for May 25, 2010 in Spokane, Washington.

On March 31, 2010, Respondent's prior owner, Chuck Redmond, informed this Office that Respondent's business had dissolved in January 2010 and had been shut down and defunct.

On April 29, 2010, Complainant submitted a Request for Dismissal which, among other things, argues that his appeal has become moot since Respondent is no longer in business and Complainant's anticipated remedy with his appeal has been satisfied because Respondent no longer conducts its allegedly unsafe and unethical business. Specifically, Complainant seeks to withdraw his appeal and dismiss this case for the following reasons:

"Due to [Complainant's] recent move [from Spokane, Washington to Wilmington, North Carolina], I am not available to participate in person and therefore not able to present or question witnesses.... More importantly, the premise of my claim against the Respondent attempts to address a pattern of unethical and unsafe practices plus blatant non-compliance with safety regulations. Since the Respondent no longer functions as a business, they can no longer put drivers or vehicles on the road, putting other motorists at risk."

Complainant's request for dismissal concludes by stating that he is "satisfied that justice is served now that the Respondent is no longer in a position of responsibility to comply with the laws and regulations designed to promote the safety of drivers of commercial vehicles and other motorists on the road."

I find that pursuant to 29 CFR § 1978.111(c), Complainant can withdraw his objections to the Secretary's Findings because they were not final when the Withdrawal was filed and this case can be dismissed.

RECOMMENDED ORDER

IT IS RECOMMENDED that Complainant's request for dismissal is **GRANTED** and the complaint filed by Dennis C. Schukay under the provisions of Section 405 of the Surface and Transportation Assistance Act, 49 U.S.C. § 31105 be **DISMISSED** with prejudice.

IT IS FURTHER ORDERED that the trial set in this case for May 25, 2010 in Spokane, Washington, is **VACATED**.

A

GERALD M. ETCHINGHAM
Administrative Law Judge

San Francisco, California