

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 17 March 2011

CASE NO. 2010-STA-69

In the Matter of:

EDDIE R. WYATT,
Complainant

v.

J. B. HUNT TRANSPORT, INC.,
Respondent

**DECISION AND ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY
DECISION AND DISMISSING CASE**

This case arises under the employee protection provisions of Section 405 of the Surface Transportation Assistance Act ("STAA" or "Act") of 1982, as amended and re-codified, Title 49 United States Code Section 31105, and the corresponding agency regulations, Title 29, Code of Federal Regulations (C.F.R.) Part 1978. Section 405 of the STAA provides for employee protection from employer discrimination because the employee has engaged in a protected activity. Protected activity consists of either reporting violations of commercial motor vehicle safety rules or refusing to operate a vehicle when operation would violate these rules.

Complainant contends that he was terminated by J.B. Hunt Transport, Inc. and had a bad mark placed on his driving record in reprisal for not wanting to violate the Federal Motor Carrier Safety Regulations (FMCSR). That is the sum total of the Complaint taken down by Investigator Shawn Hughes on July 12, 2010. (The Complaint is marked ALJX1 and admitted into evidence.)

Given the brevity of the Complaint taken by Mr. Hughes, I look to other documents in the record filed by Complainant, one of which is a Complaint he filed with the United States Equal Opportunity Commission (hereinafter EEOC). After studying the record before me, which includes pre-trial submissions by the parties, as well as the transcript of the deposition of the Complainant taken on January 19, 2011, I find that the "particulars" of the Complaint filed with the EEOC are virtually identical to Complainant's cause of action under the STAA. These particulars are as follows:

I worked for JB Hunt as a truck driver. I voluntarily self-reported an alcohol problem to JB Hunt. I took medical leave for my alcohol problem to go through a treatment program. In order to return to work I had to successfully complete an

alcohol treatment program. I did. They did not let me return to work. Their supposed reason was that I had continued to drink while in the program. This is false. I did not drink. I would not have successfully completed the program if I did so, or at least would have it extended. I was terminated because I had a disability, they regarded me as disabled, they denied me accommodation by not allowing me to return from leave, and they retaliated against me for requesting accommodation in the form of a leave.

Complainant's EEOC. Complaint is admitted as ALJX2.

Complainant's Complaint Filed July 12, 2010 is Untimely

Complainant alleges two adverse actions committed by the Respondent. The first is his termination of employment on or about May 1, 2007, and the second is that he received notice of "false information" being placed on his driver's report on April 21, 2009. (See Wyatt's statement to the Illinois Department of Employment Security dated May 16, 2007 and Wyatt's Objections to the Findings of the Secretary of Labor marked as ALJX3 and ALJX4 respectively and admitted into evidence).

Both claims are outside one hundred eighty days from the date he made his Complaint on July 12, 2010, filed with OSHA. 29 C.F.R. § 1978.102(d) states that the "...employee who believes that he has been discriminated against in violation of § 405(a) or (b) '...may, within one hundred eighty days after such an alleged violation occurs,'" file a complaint with the Secretary of Labor. The regulation states further that "[a]ccordingly, complaints not filed within 180 days of an alleged violation will ordinarily be considered to be untimely." 29 C.F.R. § 1978.102(d)(2). Neither of the alleged adverse actions fall within 180 days of Complainant's Complaint. Both events are, therefore, outside the 180 day limitation period. Also, Complainant has not indicated equitable grounds for tolling the statute.

WHEREFORE, the above considered, Respondent's Motion for Summary Decision is Granted and the Complaint is hereby dismissed as untimely.

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MICHAEL P. LESNIAK
Administrative Law Judge

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).