



Issue Date: 16 April 2013

CASE NO.: 2013-STA-00036

IN THE MATTER OF

**JOHN GRIFFITH,
Complainant**

vs.

**ORION TRUCKING/PM TRANSPORT OF FLORIDA,
Respondent**

ORDER OF DISMISSAL

This proceeding arises under the employee protective provisions of the Surface Transportation Assistance Act (STAA),¹ and the regulations promulgated thereunder.² The Secretary of Labor is empowered to investigate and determine “whistleblower” complaints filed by employees of commercial motor carriers who are allegedly discharged or otherwise discriminated against with regard to their terms and conditions of employment because the employee refused to operate a vehicle when such operation would violate a regulation, standard, or order of the United States related to commercial motor vehicles.

On 12 May 12, Complainant mailed to the Occupational Safety and Health Administration (OSHA) a letter alleging that Respondent has violated the whistleblower protections provisions of the STAA by refusing to hire him because of his history and reputation for refusing to violate hours of service regulations. OSHA conducted an investigation and on 29 Jun 12 sent Complainant its decision, dismissing his complaint and advising him that he had 30 days to object and request a hearing.

On 6 Mar 13, Complainant sent Senator Charles Grassley a seven page letter complaining about the Department of Labor’s STAA whistleblower enforcement program in general and cited his May 2012 complaint as an example of the failures of DOL and OSHA. Although he sent a copy of the letter to the chief judge at OALJ, Complainant did not object to the findings or request a hearing. Apparently, OALJ elected to treat the letter as an objection and request for de novo hearing of the OSHA dismissal and I was assigned to preside over the case.

¹ 49 U.S.C. § 31105.

² C.F.R. Part 1978.

When my staff contacted complainant by e-mail to arrange a scheduling conference call, he responded in part:

Now, what the hell is going on here? I didn't appeal 4-0520-10-012 to OALJ. There is no case. I was plain disgusted with the Secretary's Findings; took a powder and distanced myself from the matter. Additionally, what about the Respondent's rights? What about the 30 days? (We're well past 30 days since OSHA dismissed the case.)

As Complainant clearly understood, he had 30 days from the OSHA decision to file objections and demand a hearing, lest that decision become final.³ Complainant intentionally and knowingly decided to forego further administrative proceedings on his complaint. Out of what appears to have been an abundance of caution and desire to provide a pro se whistleblower every possible accommodation, the case was opened on OALJ dockets for a formal hearing, contrary to Complainant's clear intentions. It should not have been and the complaint is dismissed.

So ORDERED.

PATRICK M. ROSENOW
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within fourteen (14) 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 may be found to have waived any objections you do not raise specifically. *See* 29 C.F.R. § 1978.110(a).

³ 49 U.S.C. § 31105(b)(2)(B).

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(b). 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(b).