



**Issue Date: 20 October 2014**

**CASE NO.: 2014-STA-00067**

**IN THE MATTER OF**

**PAUL LEWIS,  
Claimant**

**v.**

**CHENNAULT SERVICES,  
Employer**

**DECISION AND ORDER**  
**DISMISSING COMPLAINT AS UNTIMELY**

This matter arises under the employee protection provisions of the Surface Transportation Assistance Act (the STAA), 49 U.S.C. § 31105, and its implementing regulations, 29 C.F.R. Part 1978, brought by Paul Lewis (Complainant) against Chennault Services (Respondent).

On September 11, 2014, Respondent filed a Motion for Summary Decision. Respondent asserts the complaint is barred by the terms of the settlement agreement between Complainant and Respondent and that the complaint concerns actions taken by OSHA and not Respondent. Respondent further asserts the complaint is time-barred. On September 18, 2014, the Court issued an Order to Show Cause as to why the complaint should not be dismissed. The Court noted that a review of the file indicated the complaint was filed on May 13, 2014, and all of the alleged violations occurred in 2012 or before. Complainant was advised that if he disagreed with the date of filing of his complaint or the date of the alleged violation, such dates shall be clearly stated in his Response.

On October 2, 2014, Complainant filed a Response. Complainant asserts the complaint was not timely filed due to a lack of knowledge of the time limits of the STAA as OSHA did not provide him this information. Complainant does not allege any violations that occurred after 2012.

**DISCUSSION**

The STAA protects employees from employer retaliation when they complain about violations of commercial or motor vehicle safety requirements. 49 U.S.C. § 31105(a)(1)(A). Employees alleging employer retaliation in violation of the STAA must file their complaints with OSHA within 180 days after the alleged violation occurs. 20 C.F.R. § 1978.102(c). The STAA limitations period is not jurisdictional and therefore is subject to waiver, estoppel, and

equitable tolling. *Hoff v. Mid-States Express, Inc.*, ARB No. 03-051, 2002-STA-6 (ARB May 27, 2004) (citing *Hicks v. Colonial Motor Freight Lines*, No. 84-STA-20 (Sec'y Dec. 10, 1985)). The regulations implementing the STAA discuss equitable tolling. Specifically, they provide in pertinent part:

[T]here are circumstances which will justify tolling of the 180-day period on the basis of recognized equitable principles or because of extenuating circumstances, e.g., where the employer has concealed or misled the employee regarding the grounds for discharge or other adverse action; or where the discrimination is in the nature of a continuing violation. The pendency of grievance-arbitration proceedings or filing with another agency are examples of circumstances which do not justify a tolling of the 180-day period. 29 C.F.R. § 1978.102(d)(3).

The Board has recognized three situations in which tolling is proper:

1. When the respondent has actively misled the complainant respecting the cause of action;
2. The complainant has in some extraordinary way been prevented from asserting his rights;  
or
3. The complainant has raised the precise statutory claim in issue but has mistakenly done so in the wrong forum.

When seeking equitable tolling of a statute of limitations, the complainant bears the burden of justifying the application of equitable tolling. *School District of Allentown v. Marshall*, 657 F.2d 16 (3d Cir. 1981).

It is undisputed that Complainant did not file his complaint until May 13, 2014, and no alleged violations occurred after 2012. I find that the STAA complaint that Complainant filed is barred by the 180-day statute of limitations. In his Response, Complainant does not cite any circumstances which would justify a tolling of the 180-day period. Complainant only notes that he was unaware of the statute of limitations and was not informed of such by OSHA. Ignorance of the law is generally not a factor that can warrant equitable tolling. A lack of awareness of the filing period or an inability to discover it does not justify equitable tolling. *McCrimmons v. CES Environmental Services*, ARB No.09-112, ALJ No. 2009-STA-035 (ARB Aug. 31, 2009).

Based on the foregoing, the Court finds the complaint herein was not timely filed and must be dismissed.

**ORDER**

The complaint of Paul Lewis is hereby **DISMISSED**.

**So ORDERED.**

**LARRY W. PRICE  
ADMINISTRATIVE LAW JUDGE**